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LAWS

OF THE

State of Missouri;

REVISED AND DIGESTED

BY AUTHORITY

OF THE

GENERAL ASSEMBLY.

IN TWO VOLUMES.

WITH AN APPENDIX.

……

VOL. I.

……

Published according to an act of the General Assembly, passed
21st February, 1825.

Missouri. Laws, statutes, etc.

ST. LOUIS:
Printed by E. Charless, for the State
1825.

Law
Office
No.
2
1825

F. B. M. 7²¹ — 12-16

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THE UNANIMOUS DECLARATION
OF THE
THIRTEEN UNITED STATES
OF
America.

4 July, 1776.

Propriety of the declaration.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Unalienable rights of the people, &c.

We hold these truths to be self evident—that all men are created equal, that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the

Absolute tyranny the object of the king of Great Britain.

establishment of an absolute tyranny over these states.—To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

Recitation of injuries and usurpations on the part of the British crown.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.—He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise, the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependant on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment

Recitation of injuries and usurpations on the part of the British crown.

for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

Petitions for redress unavailing, &c.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Appeal to the British people fruitless, &c.

Nor have we been wanting in attentions to our British brethren. We have warned them from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connexions and correspondence.—They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

Declaration of independence.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The colonies absolved from their allegiance, &c.

Mutual pledge of fidelity.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members:

JOHN HANCOCK,

NEW HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

RHODE ISLAND, &c.

Stephen Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Samuel Huntingdon,
William Williams,
Oliver Wolcott.

NEW YORK.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW JERSEY.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.

Cesar Rodney.

George Read,
Thomas M'Kean.

MARYLAND.
Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton

VIRGINIA.
George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jr.
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA.
William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.
Edward Rutledge,
Thomas Heyward, jr.
Thomas Lynch, jr.
Arthur Middleton.

GEORGIA.
Button Gwinnett,
Lyman Hall,
George Walton.

Commemoration of independence.

[NOTE. It would seem that congress was, from the beginning, attentive to the commemoration of the declaration of independence. It appears by the journals, that, in the year 1777, a respectful adjournment took place from Thursday, the 3d of July, to Saturday, the 5th, in that year. And, on the 24th of June, 1778, congress having determined to adjourn from York Town, in Pennsylvania, to meet at Philadelphia on the 2d day of July following, passed the subjoined resolution; in addition to which it was farther resolved, that congress would, in a body, attend divine worship on Sunday, the 5th day of July, to return thanks for the divine mercy, in supporting the independence of the states, and that the chaplains should be notified to officiate and preach sermons suited to the occasion:

Resolved, That a committee of three be appointed to take proper measures for a public celebration of the anniversary of independence at Philadelphia, on the 4th day of July next; and that they be authorised and directed to invite the president and council, and speaker of the assembly of the commonwealth of Pennsylvania, and such other gentlemen and strangers of distinction, as they shall deem proper.]

◆

ARTICLES OF CONFEDERATION.

9 July, 1778.

Articles of confederation.

TO ALL TO WHOM THESE PRESENTS SHALL COME,

We, the undersigned, delegates of the states affixed to our names, send Greeting:

Whereas, the delegates of the United States of America in congress assembled did, on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the independence of America, agree to certain articles of confederation and perpetual union between the states of New-Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following; viz:

Articles of confederation and perpetual union between the states of New-Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Style of the confederacy.

ARTICLE 1. The style of this confederacy shall be, "The United States of America."

Rights retained by the states.

ART. 2. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

Objects of the confederacy.

ART. 3. The said states hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Mutual privileges of the free inhabitants of the several states.

ART. 4. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state to any other state, of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction, shall be laid by any state on the property of the United States or either of them.

Persons guilty of crimes to be given up.

If any person guilty of or charged with treason, felony, or other high misdemeanor, in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the state from which he fled, be delivered up, and removed to the state having jurisdiction of his offence.

Faith to be given to the acts of each state.

Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

Delegates to be annually appointed, &c.

ART. 5. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each state shall direct, to meet in congress on the first

Each state may recall its delegates, &c.

Monday in November, in every year, with a power reserved to each state to recall its delegates or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

Number and capacity of delegates.

No state shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind.

Each state to maintain its own delegates.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

Each state to have one vote.

In determining questions in the United States in congress assembled, each state shall have one vote.

Privileges of members of congress.

Freedom of speech and debate in congress shall not be impeached or questioned in any court or place out of congress; and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from and attendance on congress, except for treason, felony, or breach of the peace.

No state to negotiate with foreign powers.

Art. 6. No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

Persons holding offices not to accept presents.

Congress not to grant titles of nobility.

Treaties between two or more states prohibited.

No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state to lay interfering imposts or duties.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by congress to the courts of France and Spain.

Regulations respecting naval and military establishments—the militia, &c.

No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in congress assembled for the defence of such state or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as, in the judgment of the United States in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No state, except in certain cases, to engage in war; nor grant commissions to armed vessels, &c.

No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the United States in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in congress assembled shall determine otherwise.

Officers of the land force under the rank of colonel, to be appointed by the states respectively

ART. 7. When land forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct; and all vacancies shall be filled up by the state which first made the appointment.

All charges of war, &c to be defrayed out of a common treasury.

The treasury to be supplied by contributions of the states.

ART. 8. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in congress assembled shall from time to time direct and appoint.

Taxes to be laid and levied by the states respectively.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in congress assembled.

Powers of the congress.

ART. 9. The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances; provided, that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures; provided, that no member of congress shall be appointed a judge of any of the said courts.

Members of congress not to be judges of admiralty courts.

Congress the last resort for deciding disputes between states.

Mode in which congress shall exercise its authority for deciding disputes between states.

The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties, by their lawful agents, who shall then be directed to appoint by joint consent commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as congress shall direct, shall, in the presence of congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day ap-

Judges to be appointed by lot.

Opinions of a majority of judges to prevail, &c.

Judgment to be final and conclusive

Sentence & proceedings to be lodged among the acts of congress.

Oath to be taken by judges.

Proviso.

pointed, without showing reasons which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear, or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence, and other proceedings, being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "*well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection or hope of reward;*" provided also, that no state shall be deprived of territory for the benefit of the United States.

Congress also to determine controversies concerning private rights of soil.

All controversies respecting the private right of soil, claimed under different grants of two or more states, whose jurisdiction as they may respect such lands and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

Further powers of congress.

The United States in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians not members of any of the states; provided, that the legislative right of any state within its own limits be not infringed or violated—establishing and regulating post offices from one state to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

Congress to appoint a committee of the states.

The United States in congress assembled shall have authority to appoint a committee to sit in the recess of congress, to be denominated "a committee of the states," and to consist of one delegate from each state, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president for more than one year in any term of three years—to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled; but if the United States in congress assembled, shall, on consideration of circumstances, judge proper that any state should not raise men or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped, in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same; in which case they shall raise, officer, clothe, arm, and equip, as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

Additional powers of congress enumerated.

Congress not to exercise

The United States in congress assembled shall never engage in a war, nor grant letters of marque and reprisal the powers enumerated unless by the votes of nine states, nor to determine any question except for adjournment from day to day, without the sanction of a majority of the states.

in time of peace, nor enter into any treaties or alliances; nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States or any of them, nor emit bills, nor borrow money on the credit of the United States, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in congress assembled.

Regulations concerning adjournment and other proceedings of congress.

The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

Committee of the states may be vested with certain powers

Art. 10. The committee of the states, or any nine of them, shall be authorised to execute, in the recess of congress, such of the powers of congress as the United States in congress assembled, by the consent of nine states, shall, from time to time, think expedient to invest them with; provided, that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the United States assembled is requisite.

Canada may be admitted into the confederacy.

Art. 11. Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this union; but no other colony shall be admitted into the same unless such admission be agreed to by nine states.

Payment of debts assumed.

Art. 12. All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

Obligations imposed by the confederation.

Art. 13. Every state shall abide by the determination of the United States in congress assembled, on all questions which, by this confederation, are submitted to them.

Union perpetual, &c.

And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislature of every state.

Ratification.

And whereas it has pleased the Great Governor of the world to incline the hearts of the legislatures we respectively represent in congress, to approve of and to authorise us to ratify the said articles of confederation and perpetual union: Know ye, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained; and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in congress assembled, on all questions which, by the said confederation, are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent; and that the union shall be perpetual.

In witness whereof, we have hereunto set our hands in congress. Done at Philadelphia, in the state of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

Signatures to act of confederation.

On the part and behalf of the state of New-Hampshire.

Josiah Bartlett,
John Wentworth, jr. Aug. 8, 1778.

On the part and behalf of the state of Massachusetts Bay,

John Hancock,
Samuel Adams,
Elbridge Gerry,
Francis Dana,
James Lovell,
Samuel Holten.

On the part and behalf of the state of Rhode Island and Providence Plantations.

William Ellery,
Henry Marchant,
John Collins.

On the part and behalf of the state of Connecticut,

Roger Sherman,
Samuel Huntington,
Oliver Wolcott,
Titus Hosmer,
Andrew Adams.

On the part and behalf of the state of New-York.

Jas. Duane,
Fra. Lewis,
Wm. Duer.
Gouv. Morris.

On the part and behalf of the state of New-Jersey.

Jno. Witherspoon,
Nath. Scudder, Nov. 26, 1778.

On the part and behalf of the state of Pennsylvania.

Robt. Morris,
Daniel Roberdeau,
Jona. Bayard Smith,
William Clingan,
Joseph Reed, 22d July, 1778.

On the part and behalf of the state of Delaware.

Thos. M'Kean, Feb. 13, 1779.
John Dickinson, May 5, 1779.
Nicholas Van Dyke.

On the part and behalf of the state of Maryland.

John Hanson, March 1, 1781.
Daniel Carroll, do.

On the part and behalf of the state of Virginia.

Richard Henry Lee,
John Banister,
Thomas Adams,
Jno. Harvie.
Francis Lightfoot Lee.

On the part and behalf of the state of North Carolina.

John Penn, July 21st, 1778.
Corns. Harnett,
Jno. Williams.

On the part and behalf of the state of South Carolina.

Henry Laurens,
William Henry Drayton,
Jno. Matthews,
Richard Huston,
Thos. Heyward, jr.

On the part and behalf of the state of Georgia.

Jno. Walton, 24th July, 1778.
Edwd. Tellfair,
Edwd. Langworthy.

[Note.—From the circumstance of delegates from the same state having signed the articles of confederation at different times, as appears by the dates, it is probable they affixed their names as they happened to be present in congress, after they had been authorised by their constituents.]

CONSTITUTION OF THE UNITED STATES.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE 1.

SECTION 1.

Legislative power.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

House of Representatives

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Qualifications of Representatives

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.—The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three; *Massachusetts* eight; *Rhode Island* and *Providence Plantations* one; *Connecticut* five; *New York* six; *New Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North Carolina* five; *South Carolina* five; and *Georgia* three.

Representation and taxation to be apportioned.

Census.

Ratio.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Vacancies

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

Speaker.

SECTION 3.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.*

Of the senate

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class, shall be vacated at the expiration of the second year, of the second class at the expiration of the

To be divided into classes.

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*See article 5, clause 1.

fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies. **Vacancies.**

Qualification of Senators. 3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

President of Senate. 4. The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

President pro tem and officers. 5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

To try impeachments, &c. 6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in case of impeachment. 7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION 4.

Manner of electing members. 1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulation, except as to the places of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

Powers of each house. 1. Each house shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member. **Rules.**

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journal. **Journals to be kept and published.**

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. **Adjournment.**

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. **Compensation and privileges of members.**

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office. **Incapacities.**

SECTION 7.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills. **Revenue bills.**

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the **Form of proceeding in the enacting of laws.**

names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Joint resolutions, orders, &c.

3. Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

Powers of congress.

The congress shall have power—

Taxes, &c.

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

Borrow money

2. To borrow money on the credit of the United States:

Commerce.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

Naturalization and bankruptcies

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

Coin.

5. To coin money, regulate the value thereof, and of foriegn coin, and fix the standard of weights and measures:

Punish counterfeiters.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

Post offices, &c.

7. To establish post offices and post roads:

Arts and sciences.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

Inferior courts.

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

Armies,

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:

Navy.

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces: Rules of army and navy

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions: Calling forth militia.

15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings:—and, Seat of govt. forts, &c.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof. General power.

SECTION 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.* Limitations of the powers of congress.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it. Habeas corpus.

3. No bill of attainder, or ex post facto law, shall be passed. Attainder, ex post facto

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken. Direct tax.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another. Export duty & commerce

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*See art. 5, clause 1.

Expenditures

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time.

Titles of nobility presents, &c.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.*

SECTION 10.

Powers withdrawn from the states individually.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal: coin money; emit bills of credit; make any thing but gold and silver a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Powers which the states can exercise only under the sanction of congress.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2.

SECTION 1.

The executive power.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

Electors of president & vice president.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Meeting of the electors

3. *The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an*

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*See amendments, article 13.

*inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.** **and their proceedings.**

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States. **Time of choosing electors**

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States. **Who may be elected president.**

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected. **Vacancy, &c.**

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased **President's compensation.**

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*Annulled. See amendments, article 12.

nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation:

His oath.

9. "I DO SOLEMNLY SWEAR (or affirm) THAT I WILL FAITHFULLY EXECUTE THE OFFICE OF PRESIDENT OF THE UNITED STATES, AND WILL, TO THE BEST OF MY ABILITY, PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION OF THE UNITED STATES."

SECTION 2.

Powers and duties of the president.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject, relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Making treaties.

Appointing ambassadors and other officers.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they may think proper, in the president alone, in the courts of law, or in the heads of departments.

Filling vacancies.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

President to give information and recommend measures.

1. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully

executed; and shall commission all the officers of the United States.

SECTION 4.

1. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. **How the president may be removed.**

ARTICLE 3.

SECTION 1.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall at stated times, receive for their services a compensation which shall not be diminished during their continuance in office. **Of the judicial power.** **Judges.**

SECTION 2.

1. The judicial power shall extend to all cases in law or equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects. **Extent of the judicial power.**

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make. **Original and appellate jurisdiction of the supreme court.**

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed. **Of trials for crimes.**

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their ene- **Of treason.**

Definition.

mies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Punishment.

The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE 4.

SECTION 1.

Faith to be given to public acts.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION 2.

Privileges of citizens.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Fugitives from justice

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Persons held to service,&c

3. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3.

New states may be admitted.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Disposal of territory.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4.

Guarantee and protection of states

1. The United States shall guaranty to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence

ARTICLE 5.

Of amendments to the constitution.

1. The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.*

ARTICLE 6.

Former debts and engagements valid.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Constitution, laws, and treaties of U. S.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

Oath to support the constitution.

No religious test.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE 7.

When this constitution shall take effect.

1. The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and deputy from Virginia.

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*See ante art. 1, sec. 3, clause 1.

NEW-HAMPSHIRE.
John Langdon,
Nicholas Gilman.
MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.
CONNECTICUT.
William Samuel Johnson,
Roger Sherman.
NEW-YORK.
Alexander Hamilton.
NEW-JERSEY.
William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.
PENNSYLVANIA.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Governeur Morris.

DELAWARE.
George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.
MARYLAND.
James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.
VIRGINIA.
John Blair,
James Madison, jun.
NORTH CAROLINA.
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.
SOUTH CAROLINA.
John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.
GEORGIA.
William Few,
Abraham Baldwin.

Attest, WILLIAM JACKSON, *Secretary.*

◆

IN CONVENTION,

MONDAY, SEPTEMBER 17th, 1787.

Present: the states of New-Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Constitution to be laid before congress, &c.

1. *Resolved*, That the preceding constitution be laid before the United States in congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in congress assembled.

Congress to fix a day for appointing electors.

2. *Resolved*, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in congress assembled, should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under this constitution. That after such pub-

lication, the electors should be appointed, and the senators and representatives elected. That the electors should meet on the day fixed for the election of the president, and should transmit their votes, certified, signed, sealed, and directed, as the constitution requires, to the secretary of the United States, in congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the senate, for the sole purpose of receiving, opening, and counting the votes for president; and, that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution.

How constitution to be carried into effect.

By the unanimous order of the convention,

GEORGE WASHINGTON, *President.*

WILLIAM JACKSON, *Secretary.*

◆

IN CONVENTION,

SEPTEMBER 17th, 1787.

SIR,

1. WE have now the honor to submit to the consideration of the United States in congress assembled, that constitution which has appeared to us the most adviseable.

Letter from convention.

2. The friends of our country have long seen and desired, that the power of making war, peace, and treaties; that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the union: but the impropriety of delegating such extensive trust to one body of men, is evident, hence results the necessity of a different organization.

3. It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion, this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

4. In all our deliberations on this subject, we kept

steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

5. That it will meet the full and entire approbation of every state, is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. With great respect, we have the honor to be, sir, your excellency's most obedient and humble servants.

By the unanimous order of the convention.

GEORGE WASHINGTON, *President.*

His excellency the president of congress.

◆

[The conventions of a number of the states having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, congress, at the session begun and held at the city of New-York, on Wednesday, the 4th of March, 1789, proposed to the legislatures of the several states twelve amendments, ten of which only were adopted. They are the ten first following.]

AMENDMENTS TO THE CONSTITUTION.

Article 1.

Religion, freedom of speech, &c.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article 2.

Right to bear arms.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE 3.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Quartering soldiers.

ARTICLE 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

No search warrant except on oath.

ARTICLE 5.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Capital and infamous crimes—proceedings.

ARTICLE 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

Right of the accused in criminal cases.

ARTICLE 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Trial by jury.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Bail & fines.

ARTICLE 9.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Construction of powers delegated.

ARTICLE 10.

Powers reserved.

The powers not delegated to the United States by the constitution, nor prohibited by it to these states, are reserved to the states respectively, or to the people.

ARTICLE 11.*

Restraint of judicial power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE 12.†

Mode of electing president and vice president.

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed;

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*See ante. art. 3, sec. 2, clause 1.

†See ante. art. 2, sec. 1, clause 3, page 28.

and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

ARTICLE 13.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

[See, as connected with this subject, ante, art. 1, sec 9, clause 7, page 20.]

[NOTE.—The 11th article of the amendments to the constitution, was proposed at the second session of the third congress; the 12th article, at the first session of the eighth congress; and the 13th article, at the second session of the eleventh congress.]

TREATY OF CESSION.

30 April, 1803

Treaty between the U. States of America and the French republic.

The president of the United States of America, and the first consul of the French republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemiaire, an 9 (30th September, 1800) relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid the 27th October, 1795, between his catholic majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their plenipotentiaries, to wit, the president of the United States of America, by and with the advice and consent of the senate of the said states, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said states, near the government of the French republic; and the first consul, in the name of the French people, the French citizen Barbe Marbois, minister of the public treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

Desire of the parties to remove all source of misunderstanding relative to the construction of the treaty of Madrid, of the 27th October, 1795, &c.

And to strengthen the union and friendship of the two nations.

Retrocession of Louisiana by Spain to France stated.

Consideration of the retrocession

Title of France incontestable.

Cession from France to U. States.

Art. 1. Whereas, by the article the third of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, an 9, (1st October, 1800,) between the first consul of the French republic and his catholic majesty, it was agreed as follows: "His catholic majesty promises and engages on his part, to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states." *And whereas*, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory: The first consul of the French republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French republic, forever and in full sovereignty the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic in virtue of the above-mentioned treaty, concluded with his catholic majesty.

What is included in the cession by the preceding article.

Art. 2. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana, and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

Inhabitants of the ceded territory to be incorporated in the union, upon the principles of the federal constitution.

Art. 3. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

A commissary to be sent from France to receive the province of

Art. 4. There shall be sent by the government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his catholic majesty the said country and its dependencies, in the name of the French republic, if it has not been already done, as to transmit it in the name of the French republic to the commissary or agent of the United States.

Louisiana from the Spanish officers, and to pass it over to the U. States.

Art. 5. Immediately after the ratification of the present treaty by the president of the United States, and in case that of the first consul shall have been previously obtained, the commissary of the French republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the president to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this treaty.

Period of surrendering the military posts &c to the U. States.

Art. 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

The United States to execute the treaties of Spain with the Indians &c.

Art. 7. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on; it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandize, or other or greater tonnage than those paid by the citizens of the United States.

The vessels of France and Spain, laden with the productions of their respective countries, and entering ports of Louisiana, entitled to the same privileges for twelve years, as vessels of the United States, from France or Spain, entering the same ports

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory: the twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is, however, well understood, that the object of the above article is to favor the manufactures, commerce, freight, and navigation, of France and of Spain, so far as relates to the importations

No other nation entitled to the same privileges during the said period of 12 years.

Object of the indulgence to French and Spanish vessels.

that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

After the expiration of the 12 years, the vessels of France &c.

ART. 8. In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

A particular convention providing for the payment of debts to citizens of the United States, to be ratified herewith.

ART. 9. The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French republic, prior to the 30th of September, 1800, (8th Vendemiaire, 9.) is approved, and to have its execution in the same manner as if it had been inserted in the present treaty, and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

Another convention relative to a definitive rule between the parties, to be ratified at the same time

Another particular convention, signed at the same date as the present treaty, relative to a definitive rule between the contracting parties, is in the like manner approved, and will be ratified in the same form, and in the same time, and jointly.

Ratifications to be exchanged in six months.

ART. 10. The present treaty shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months after the date of the signature by the ministers plenipotentiary, or sooner if possible.

In faith whereof, the respective plenipotentiaries have signed these articles in the French and English languages, declaring, nevertheless, that the present treaty was originally agreed to in the French language; and have thereunto put their seals.

Done at Paris, the tenth day of Floreal, in the eleventh year of the French republic, and the 30th April, 1803.

ROBERT R. LIVINGSTON, [L. S.]
JAMES MONROE, [L. S.]
BARBE MARBOIS, [L. S.]

[The treaties with foreign nations, by which territory has been acquired, or which relate to boundaries are those with Great Britain of 1733 (laws U, S, vol. 1, pa. 203) and of 1794 (same vol. pa. 208;) of 1795 with Spain (same vol. pa. 262) and the above treaty with France. On the 3d Nov. 1862 France by a separate act, never made public, ceded to Spain all of Louisiana west of the Mississippi including the City and Island of New-Orleans—by the treaty of St. Ildefenso, 1st Oct. 1803, Louisiana was retroceded to France. See Laws U. vol. 1. pa. 435.]

AN ACT

6th March, 1820.

To authorize the people of the Missouri Territory to form a Constitution and State Government, and for the Admission of such State into the Union on an equal footing with the original States, and to prohibit Slavery in certain Territories.

The inhabitants of Missouri authorized to form a Constitution and State Government, and to be admitted into the Union.

[Sec. 1.] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the inhabitants of that portion of the Missouri territory, included within the boundaries hereinafter designated, be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union, upon an equal footing with the original states, in all respects whatsoever.

Boundaries.

Sec. 2. *And be it further enacted*, That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along that parallel of latitude, to the St. Francois river; thence up, and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence west, along the same, to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river; thence, from the point aforesaid, north, along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line to correspond with the Indian boundary line; thence east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down and along the middle of the main channel of the said river Des Moines to the mouth of the same, where it empties into the Mississippi river; thence, due east, to the middle of the main channel of the Mississippi river; thence down, and following the course of the Mississippi river, in the middle of the main channel thereof, to the place of beginning: *Provided*, The said state shall ratify the boundaries aforesaid: *And provided also*, That the said state shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said state, so far as the said rivers shall form a common boundary to the said state and any other state or states, now or hereafter to be formed and bounded by the same; such rivers to be common to

Proviso; the State to ratify the boundaries, and have concurrent jurisdiction of rivers.

Rivers, &c. to be common highways and free.

both; and that the river Mississippi, and the navigable rivers and waters leading into the same, shall be common highways, and for ever free, as well to the inhabitants of the said state as to other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said state.

Qualifications of electors and elected, to form a Convention.

SEC. 3. *And be it further enacted*, That all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory three months previous to the day of election, and all other persons qualified to vote for representatives to the General Assembly of the said territory, shall be qualified to be elected, and they are hereby qualified and authorized to vote, and choose representatives to form a convention, who shall be apportioned amongst the several counties as follows:

Apportionment of representatives to form a convention.

From the county of Howard, five representatives. From the county of Cooper, three representatives. From the county of Montgomery, two representatives. From the county of Pike, one representative. From the county of Lincoln, one representative. From the county of St. Charles, three representatives. From the county of Franklin, one representative. From the county of St. Louis, eight representatives. From the county of Jefferson, one representative. From the county of Washington, three representatives. From the county of St. Genevieve, four representatives. From the county of Madison, one representative. From the county of Cape Girardeau, five representatives. From the county of New-Madrid, two representatives. From the county of Wayne, and that portion of the county of Lawrence that falls within the boundaries herein designated, one representative.

Election on the first Monday of May and two days following, &c.

And the election for the representatives aforesaid shall be holden on the first Monday, and two succeeding days, of May next, throughout the several counties aforesaid in the said territory, and shall be, in every respect, held and conducted in the same manner, and under the same regulations, as is prescribed by the laws of the said territory regulating elections therein for members of the General Assembly, except that the returns of the election in that portion of Lawrence county, included in the boundaries aforesaid, shall be made to the county of Wayne, as is provided in other cases under the laws of said territory.

Members of Convention to meet at the seat of

SEC. 4. *And be it further enacted*, That the members of the convention thus duly elected shall be, and they are hereby, authorized to meet, at the seat of government of said territory, on the second Monday of the month of June government on the second Monday of June, &c.

Convention to determine on the formation of a Constitution, or otherwise.

Proviso; Constitution to be republican, &c.

Conditions.

next; and the said convention, when so assembled, shall have power and authority to adjourn to any other place in the said territory, which to them shall seem best for the convenient transaction of their business; and which convention, when so met, shall first determine, by a majority of the whole number elected, whether it be, or be not, expedient at that time to form a constitution and state government for the people within the said territory, as included within the boundaries above designated; and, if it be deemed expedient, the convention shall be, and hereby is, authorized to form a constitution and state government; or, if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government; which said representatives shall be chosen in such manner, and in such proportion as they shall designate; and shall meet at such time and place as shall be prescribed by the said ordinance; and shall then form for the people of said territory, within the boundaries aforesaid, a constitution and state government: *Provided*, That the same, whenever formed, shall be republican, and not repugnant to the constitution of the United States; and that the legislature of said state shall never interfere with the primary disposal of the soil of the United States, nor with any regulations congress may find necessary for securing the title in such soil to the *bona fide* purchasers; and that no tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents.

The State entitled to one Representative in Congress.

SEC. 5. *And be it further enacted*, That, until the next general census shall be taken, the said state shall be entitled to one representative in the House of Representatives of the United States.

Propositions offered to the Convention for acceptance or rejection.

SEC. 6. *And be it further enacted*, That the following propositions be, and the same are hereby, offered to the convention of the said territory of Missouri, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

1st proposition—Section No. 16 for Schools.

First. That section numbered sixteen in every township, and when such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the state for the use of the inhabitants of such township, for the use of schools.

2d proposition—Salt Springs and lands adjacent for the use of the State.

Second. That all salt springs, not exceeding twelve in number, with six sections of land adjoining to each, shall be granted to the said state for the use of said state, the same to be selected by the legislature of the said state, on or

Proviso, Salt Springs confirmed to individuals, &c.

Proviso; Salt Springs not to be leased for more than 10 years.

before the first day of January, in the year one thousand eight hundred and twenty-five; and the same, when so selected, to be used under such terms, conditions, and regulations, as the legislature of said state shall direct: *Provided*, That no salt spring, the right whereof now is, or hereafter shall be, confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said state: *And provided also*, That the legislature shall never sell or lease the same, at any one time, for a longer period than ten years, without the consent of congress.

3d proposition—5 per centum net proceeds of sales of land for public Roads and Canals.

Third. That five per cent. of the net proceeds of the sale of lands lying within the said territory or state, and which shall be sold by congress, from and after the first day of January next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three fifths shall be applied to those objects within the state, under the direction of the legislature thereof; and the other two fifths in defraying, under the direction of congress, the expenses to be incurred in making of a road or roads, canal or canals, leading to the said state.

4th proposition—4 sections of land for a Seat of Government.

Proviso; location before public sale of surrounding lands.

Fourth. That four entire sections of land be, and the same are hereby, granted to the said state, for the purpose of fixing their seat of government thereon; which said sections shall, under the direction of the legislature of said state, be located, as near as may be, in one body, at any time, in such townships and ranges as the legislature aforesaid may select, on any of the public lands of the United States: *Provided*, That such locations shall be made prior to the public sale of the lands of the United States surrounding such location.

5th proposition—36 sections of land for a Seminary of Learning.

Proviso; the five foregoing propositions on condition that lands sold by the United States be exempt from taxes for five years; and bounty lands for three years.

Fifth. That thirty-six sections, or one entire township, which shall be designated by the president of the United States, together with the other lands heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of said state, to be appropriated solely to the use of such seminary by the said legislature: *Provided*, That the five foregoing propositions herein offered, are on the condition that the convention of the said state shall provide, by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of January next, shall remain exempt from any tax laid by order or under the authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale: *And further*, That the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees, or their heirs, remain exempt as aforesaid from taxation for the term of three years from and after the date of the patents respectively.

A true and attested copy of the Constitution to be transmitted to Congress.

SEC. 7. *And be it further enacted*, That in case a constitution and state government shall be formed for the people of the said territory of Missouri, the said convention, or representatives, as soon thereafter as may be, shall cause a true and attested copy of such constitution, or frame of state government, as shall be formed or provided, to be transmitted to congress.

Slavery, &c. forever prohibited in the Territoy north of 36 deg 30 minutes north latitude, except Missouri.

Proviso; fugitives may be reclaimed.

SEC. 8. *And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, for ever prohibited: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed, in any state or territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

[*Approved*, 6 *March*, 1820.]

[In pursuance of the provisions of this act, members of the convention were elected to form a Constitution and State Government. They assembled at St. Louis on the 12th June, 1820, and determined that it was expedient to form a Constitution and State Government, and having accepted the five propositions offered by the sixth section of the above act, passed an ordinance which was finally signed on the 19th of July, 1820, (see post.) A Constitution was formed, whereby the boundaries, mentioned in the 2d section of the above act, were ratified—and a new republic established by the name of the State of Missouri,—(see post.)

Agreeable to the 7th section of the above act, an attested copy of the Constitution, was transmitted to Congress. A resolution was introduced in both Houses for the unconditional admission of the State into the Union, as had been the uniform course in relation to other new States; these resolutions were, however, lost, and finally after much discussion, a resolution was passed for admitting the State *on a certain condition*, (see post.)—The Legislature of Missouri on the 27th June, 1821, accepted the condition, protesting at the same time against the right of Congress to annex it.—(See post, solemn public act, &c.) and on the tenth of August, 1821, the President of the United States issued his proclamation, announcing the acceptance of this State of the condition.]

19th July, 1820.

AN ORDINANCE

Declaring the assent of the people of the state of Missouri, by their representatives in convention assembled, to certain conditions and provisions in the act of congress of the sixth of March, one thousand eight hundred and twenty, entitled "An act to authorize the people of Missouri territory to form a constitution and state government, and for the admission of such state into the union on an equal footing with the original states, and to prohibit slavery in certain territories."

Recital of the act of congress.

Whereas the act of congress of the United States of America, approved March the sixth, one thousand eight hundred and twenty, entitled "An act to authorize the people of Missouri territory to form a constitution and state government, and for the admission of such state into the union on an equal footing with the original states, and to prohibit slavery in certain territories," contains certain requisitions and provisions, and, among other things, has offered to this convention when formed, for and in behalf of the people inhabiting this state, for their free acceptance or rejection, the five following propositions, and which, if accepted by this convention in behalf of the people as aforesaid, are to be obligatory on the United States, viz:

Propositions.

School lands.

"First, That section numbered sixteen in every township, and when such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the state for the use of the inhabitants of such township for the use of schools.

Salt Springs and 6 sections adjoining each.

"Second, That all salt springs, not exceeding twelve in number, with six sections of land adjoining to each, shall be granted to the said state for the use of said state, the same to be selected by the legislature of said state on or before the first day of January, in the year one thousand eight hundred and twenty-five, and the same, when so selected, to be used under such terms, conditions and regulations as the legislature of said state shall direct; *Provided*, that no salt spring the right whereof now is, or hereafter shall be, confirmed or adjudged to any individual or individuals, shall by this section be granted to said state; and provided also, that the legislature shall never sell or lease the same at any one time for a longer period than ten years without the consent of congress.

Proviso; in favor of confirmations to individuals.

Fund for roads and canals.

"Third, That five per cent of the nett proceeds of the sale of lands lying within the said territory or state, and which shall be sold by congress from and after the first day of January next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three fifths shall be applied to those objects within the state under the direction of the legislature thereof, and the other two fifths in defraying, under the direction of congress, the expenses to be incurred in making of a road or roads, canal or canals, leading to the said state.

Lands for locating permanent seat of government.

"Fourth, That four entire sections of land be, and the same are hereby granted to the said state for the purpose of fixing their seat of government thereon; which said sections shall, under the direction of the legislature of said state, be located as near as may be in one body, at any time, in such townships and ranges as the legislature aforesaid may select, on any of the public lands of the United States; provided, that such location shall be made prior to the public sale of the lands of the United States surrounding such location.

University lands.

"Fifth, That thirty-six sections, or one entire township, which shall be designated by the President of the United States, together with the other lands heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of said state, to be appropriated solely for the use of such seminary by the legislature."

Propositions accepted.

Lands—exempt from taxation.

Now THIS CONVENTION, for and in behalf of the people inhabiting this state, and by the authority of the said people, DO ACCEPT the five before recited propositions offered by the act of congress under which they are assembled; and in pursuance of the conditions, requisitions, and other provisions in the before recited act of congress contained, this convention, for and in behalf of the people inhabiting this state, DO ORDAIN, AGREE and DECLARE, that every and each tract of land sold by the United States from and after the first day of January next, shall remain exempt from any tax laid by order, or under the authority of the state, whether for state, county or township, or any other purpose whatever, for the term of five years from and after the respective days of sale thereof; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt as aforesaid from taxation for the term of three years from and after the date of the patents respectively; provided, nevertheless, that if the congress of the United States shall consent to repeal and revoke the following clause in the fifth proposition of the sixth section of the act of congress before recited, and in these words, viz. "That every and each tract of land sold by the United States from and after the first day of January next, shall remain exempt

Modification of proposition concerning tax on lands proposed.

from any tax laid by order, or under the authority of the state, whether for state, county or township, or any other purpose whatever, for the term of five years from and after the day of sale, and further"—that this convention for and in behalf of the people of the state of Missouri, do hereby ordain, consent and agree, that the same be so revoked and repealed, without which consent of the congress as aforesaid, the said clause to remain in full force and operation as first above provided for in this ordinance: and this convention doth hereby request the congress of the United States so to modify their third proposition, that the whole amount of five per cent on the sale of public lands therein offered may be applied to the construction of roads and canals, and the promotion of education within this state, under the direction of the legislature thereof. And this convention for and in behalf of the people inhabiting this state, and by the authority of the said people, do further ORDAIN, AGREE, and DECLARE that this ordinance shall be IRREVOCABLE without the consent of the United States.

This ordinance irrevocable without consent of U. S.

Done in convention, at St. Louis, in the State of Missouri, this nineteenth day of July, in the year of our Lord one thousand eight hundred and twenty, and of the Independence of the United States of America the forty-fifth.

By order of the Convention,

DAVID BARTON, *President.*

ATTEST,

WM. G. PETTUS, *Secretary.*

[Agreeably to the compact formed between the United States and the State of Missouri, the School lands mentioned in the first proposition, have been appropriated to the use of common schools, (*see post, title "schools and school lands*.") The Salt Springs and lands adjoining have been selected, and provisions made for the management and leasing thereof, (*see post, "salines.*") The lands for the location of the seat of government, have been selected and appropriated, (*see "seat of government*.") The University lands have not yet been designated.]

CONSTITUTION

OF THE

State of Missouri.

19th July, 1820.

WE, the people of Missouri, inhabiting the limits hereinafter designated, by our representatives in convention assembled, at St. Louis, on Monday the 12th day of June, 1820, do mutually agree to form and establish a free and independent republic, by the name of "THE STATE OF MISSOURI;" and for the government thereof, do ordain and establish this constitution.

Republic established by the name of the State of Missouri.

ARTICLE I.

OF BOUNDARIES.

We do declare, establish, ratify, and confirm, the following as the permanent boundaries of said state, that is to say: "Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along the said parallel of latitude, to the St. Francois river; thence up, and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence west, along the same, to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river; thence, from the point aforesaid, north, along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line correspond with the Indian boundary line; thence east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down along the middle of the main channel of the said river Des Moines to the mouth of the same, where it empties into the Mississippi river; thence due east to the middle of the main channel of the Mississippi river; thence down, and following the course of the Mississippi river, in the middle of the main channel thereof, to the place of beginning."

Permanent boundaries.

ARTICLE II.

OF THE DISTRIBUTION OF POWERS.

The powers of government shall be divided into three distinct departments, each of which shall be confided to a

Distribution of powers.

separate magistracy; and no person charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III.

OF THE LEGISLATIVE POWER.

General assembly. SECTION 1. The legislative power shall be vested in a "*General Assembly*," which shall consist of a "*Senate*," and of a "*House of Representatives*."

Constitution of house of representatives. SEC. 2. The house of representatives shall consist of members to be chosen every second year by the qualified electors of the several counties. Each county shall have at least one representative, but the whole number of representatives shall never exceed one hundred.

Qualification of representatives. SEC. 3. No person shall be a member of the house of representatives, who shall not have attained to the age of twenty-four years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state two years, and of the county which he represents one year next before his election, if such county shall have been so long established, but if not, then of the county or counties from which the same shall have been taken; and who shall not, moreover, have paid a state or county tax.

Enumeration of inhabitants and apportionment of representatives. SEC. 4. The general assembly, at their first session, and in the years one thousand eight hundred and twenty-two, and one thousand eight hundred and twenty-four, respectively, and every fourth year thereafter, shall cause an enumeration of the inhabitants of this state to be made; and at the first session after each enumeration, shall apportion the number of representatives among the several counties, according to the number of free white male inhabitants therein.

Term of service and qualification of senators. SEC. 5. The senators shall be chosen by the qualified electors, for the term of four years. No person shall be a senator, who shall not have attained to the age of thirty years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state four years, and of the district which he may be chosen to represent, one year next before his election, if such district shall have been so long established, but if not, then of the district or districts from which the same shall have been taken; and who shall not, moreover, have paid a state or county tax.

SEC. 6. The senate shall consist of not less than fourteen

Constitution of the senate.

nor more than thirty-three members; for the election of whom the state shall be divided into convenient districts, which may be altered from time to time, and new districts established, as public convenience may require; and the senators shall be apportioned among the several districts, according to the number of free white male inhabitants in each: provided, that when a senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district, and no county shall be divided in forming a district.

Apportionment and districts.

Senators to be classed.

Sec. 7. At the first session of the general assembly, the senators shall be divided by lot, as equally as may be, into two classes. The seats of the first class shall be vacated at the end of the second year, and the seats of the second class at the end of the fourth year; so that one half of the senators shall be chosen every second year.

Elections when held.

Sec. 8. After the first day of January, one thousand eight hundred and twenty-two, all general elections shall commence on the first Monday in August, and shall be held biennially; and the electors, in all cases, except of treason, felony, or breach of the peace, shall be privileged from arrest during their continuance at elections, and in going to, and returning from the same.

Electors privileged from arrest.

Writs of election to supply vacancies.

Sec. 9. The governor shall issue writs of election, to fill such vacancies as may occur in either house of the general assembly.

Electors, their qualifications.

Sec. 10. Every free white male citizen of the United States who may have attained to the age of twenty-one years, and who shall have resided in this state one year before an election, the last three months whereof shall have been in the county or district in which he offers to vote, shall be deemed a qualified elector of all elective offices: provided, that no soldier, seaman, or mariner, in the regular army or navy of the United States, shall be entitled to vote at any election in this state.

Officers not eligible to the General assembly.

Sec 11. No judge of any court of law or equity, secretary of state, attorney general, state auditor, state or county treasurer, register or recorder, clerk of any court of record, sheriff, coroner, member of congress, nor other person holding any lucrative office under the United States or this state, militia officers, justices of the peace and postmasters excepted, shall be eligible to either house of the general assembly. (a)

(a) see also amendments sec 4

Collectors, &c not eligible to gen-

Sec. 12. No person who now is, or who hereafter may be, a collector or holder of public money, nor any assistant or deputy of such collector or holder of public money, shall eral assembly unless they fully account.

be eligible to either house of the general assembly, nor to any office of profit or trust, until he shall have accounted for and paid all sums for which he may be accountable.

Clergymen, &c. not eligible to General assembly.

SEC. 13. No person while he continues to exercise the functions of a bishop, priest, clergyman, or teacher of any religious persuasion, denomination, society or sect whatsoever, shall be eligible to either house of the general assembly; nor shall he be appointed to any office of profit within the state, the office of justice of the peace excepted.

Disqualification on account of crime.

SEC. 14. The general assembly shall have power to exclude from every office of honor, trust, or profit, within this state, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime.

Disqualification for bribery.

SEC. 15. Every person who shall be convicted of having, directly or indirectly, given or offered any bribe to procure his election or appointment, shall be disqualified for any office of honor, trust, or profit, under this state; and any person who shall give or offer any bribe to procure the election or appointment of any other person, shall, on conviction thereof, be disqualified for an elector, or for any office of honor, trust, or profit, under this state, for ten years after such conviction.

Disqualification of senators and representatives for certain offices.

SEC. 16. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased during his continuance in office, except to such offices as shall be filled by elections of the people.

Each house to appoint its officers.

Quorum.

SEC. 17. Each house shall appoint its own officers, and shall judge of the qualifications, elections, and returns of its own members. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Powers and duty of each house.
Rules.
Expulsion.

Journal.

SEC. 18. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause. They shall each, from time to time, publish a journal of their proceedings, except such parts as may, in their opinion, require secresy; and the yeas and nays on any question shall be entered on the journal at the desire of any two members.

Doors to be kept open except.

SEC. 19. The doors of each house, and of committees of the whole, shall be kept open, except in cases which may require secresy; and each house may punish, by fine or

Power to punish.

imprisonment, any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in their presence, during their session; provided, that such fines shall not exceed three hundred dollars, and such imprisonment shall not exceed forty-eight hours, for one offence.

Adjournment.

Sec. 20. Neither house shall, without the consent of the other, adjourn for more than two days at any one time, nor to any other place than to that in which the two houses may be sitting.

Bills—originating—readings.

Sec. 21. Bills may originate in either house, and may be altered, amended, or rejected, by the other; and every bill shall be read on three different days in each house, unless two thirds of the house where the same is depending shall dispense with this rule; and every bill having passed both houses, shall be signed by the speaker of the house of representatives, and by the president of the senate.

To be signed.

Appointment of officers viva voce.

Sec. 22. When any officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the general assembly, the votes shall be publicly given *viva voce*, and entered on the journals. The whole list of members shall be called, and the names of absentees shall be noted and published with the journal.

Privilege of senators and representatives.

Sec. 23. Senators and representatives shall, in all cases, except of treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and for fifteen days next before the commencement and after the termination of each session; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation.

Sec. 24. The members of the general assembly shall severally receive from the public treasury a compensation for their services, which may from time to time be increased or diminished by law, but no alteration, increasing or tending to increase the compensation of members, shall take effect during the session at which such alteration shall be made.

Suits against the state.

Sec. 25. The general assembly shall direct by law in what manner, and in what courts, suits may be brought against the state.

Power—limited.

Sec. 26. The general assembly shall have no power to pass laws,

Emancipation.

First. For the emancipation of slaves without the consent of their owners, or without paying them, before such emancipation, a full equivalent for such slaves so emancipated; and

Introduction of slaves by emigrants.

Second. To prevent *bona fide* emigrants to this state, or actual settlers therein, from bringing from any of the United States, or from any of their territories, such persons as may there be deemed to be slaves, so long as any persons of the same description are allowed to be held as slaves by the laws of this state.

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They shall have power to pass laws,

Power to prevent the introduction of slaves.

First. To prohibit the introduction into this state of any slaves who may have committed any high crime in any other state or territory;

Second. To prohibit the introduction of any slave for the purpose of speculation, or as an article of trade or merchandize;

Third. To prohibit the introduction of any slave, or the offspring of any slave, who heretofore may have been, or who hereafter may be, imported from any foreign country into the United States, or any territory thereof, in contravention of any existing statute of the United States; and

1

May authorize slaves to be emancipated.

Fourth. To permit the owners of slaves to emancipate them, saving the rights of creditors, where the person so emancipating will give security that the slave so emancipated shall not become a public charge.

3

Duty to pass laws.

It shall be their duty, as soon as may be, to pass such laws as may be necessary,

To prevent the introduction of free negroes and mulattoes

First. To prevent free negroes and mulattoes from coming to, and settling in this state, under any pretext whatsoever; (*a*) and

To compel master to treat slaves with humanity.

Second. To oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life or limb.

Rights of slaves in trials for crimes

Sec. 27. In prosecutions for crimes, slaves shall not be deprived of an impartial trial by jury, and a slave convicted of a capital offence shall suffer the same degree of punishment, and no other, that would be inflicted on a free white person for a like offence; and courts of justice before whom slaves shall be tried, shall assign them counsel for their defence.

Crimes committed on slaves.

Sec. 28. Any person who shall maliciously deprive of life, or dismember a slave, shall suffer such punishment as would be inflicted for the like offence if it were committed on a free white person.

Impeachment.

Sec. 29. The governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general, and all judges of the courts of law and equity, shall be liable to impeach-

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(*a*) See post, "admission into the Union," resolution, and solemn public act.

Judgment.

ment for any misdemeanor in office; but judgment in such case shall not extend farther than removal from office, and disqualification to hold any office of honor, trust, or profit, under this state.

Impeachment to be made by house of representatives and tried by senate.

Sec. 30. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate, and when sitting for that purpose, the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried, the presiding judge of the supreme court shall preside; and no person shall be convicted without the concurrence of two thirds of the senators present.

Treasurer.

Sec. 31. A state treasurer shall be biennially appointed by joint vote of the two houses of the general assembly, who shall keep his office at the seat of government. No money shall be drawn from the treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.

Appointment of officers.

Oath of office.

Sec. 32. The appointment of all officers, not otherwise directed by this constitution, shall be made in such manner as may be prescribed by law; and all officers, both civil and military, under the authority of this state, shall, before entering on the duties of their respective offices, take an oath or affirmation to support the constitution of the United States, and of this state, and to demean themselves faithfully in office.

Meetings of general assembly.

Sec. 33. The general assembly shall meet on the third Monday in September next; on the first Monday in November, eighteen hundred and twenty-one; on the first Monday in November, eighteen hundred and twenty-two; and thereafter the general assembly shall meet once in every two years, and such meeting shall be on the first Monday in November, unless a different day shall be appointed by law.

Counties.

Sec. 34. No county now established by law shall ever be reduced by the establishment of new counties to less than twenty miles square; nor shall any county hereafter be established which shall contain less than four hundred square miles.

Revision of laws.

Sec. 35. Within five years after the adoption of this constitution, all the statute laws of a general nature, both civil and criminal, shall be revised, digested, and promulgated, in such manner as the general assembly shall direct; and a like revision, digest, and promulgation, shall be made at the expiration of every subsequent period of ten years.

Style of laws.

SEC. 36. The style of the laws of this state shall be, "*Be it enacted by the general assembly of the state of Missouri.*"

ARTICLE IV.

OF THE EXECUTIVE POWER.

Governor.

SECTION 1. The supreme executive power shall be vested in a chief magistrate, who shall be styled "*The Governor of the state of Missouri.*"

Qualifications.

SEC. 2. The governor shall be at least thirty-five years of age, and a natural born citizen of the United States, or a citizen at the adoption of the constitution of the United States, or an inhabitant of that part of Louisiana now included in the state of Missouri at the time of the cession thereof from France to the United States, and shall have been a resident of the same at least four years next before his election.

Term of service and election of governor.

SEC. 3. The governor shall hold his office for four years, and until a successor be duly appointed and qualified. He shall be elected in the manner following: At the time and place of voting for members of the house of representatives, the qualified electors shall vote for a governor; and when two or more persons have an equal number of votes, and a higher number than any other person, the election shall be decided between them by a joint vote of both houses of the general assembly at their next session.

Ineligible for 4 years.

SEC. 4. The governor shall be ineligible for the next four years after the expiration of his term of service.

Commander of militia and navy.

SEC. 5. The governor shall be commander in chief of the militia and navy of this state, except when they shall be called into the service of the United States; but he need not command in person, unless advised so to do by a resolution of the general assembly.

Remission of fines, &c. Pardons.

SEC. 6. The governor shall have power to remit fines and forfeitures, and, except in cases of impeachment, to grant reprieves and pardons.

Governor to give information to general assembly and may convene them.

SEC. 7. The governor shall, from time to time, give to the general assembly information relative to the state of the government, and shall recommend to their consideration such measures as he shall deem necessary and expedient. On extraordinary occasions, he may convene the general assembly by proclamation, and shall state to them the purposes for which they are convened.

To distribute and enforce laws.

SEC. 8. The governor shall take care that the laws be distributed and faithfully executed; and he shall be a conservator of the peace throughout the state.

Vacancies how supplied.

SEC. 9. When any office shall become vacant, the governor shall appoint a person to fill such vacancy, who shall continue in office until a successor be duly appointed and qualified according to law.

Power and duty in the approval or disapproval of bills.

SEC. 10. Every bill which shall have been passed by both houses of the general assembly, shall, before it becomes a law, be presented to the governor for his approbation. If he approve, he shall sign it; if not, he shall return it, with his objections, to the house in which it shall have originated,—and the house shall cause the objections to be entered at large on its journals, and shall proceed to reconsider the bill. If, after such re-consideration, a majority of all the members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall be in like manner reconsidered, and if approved by a majority of all the members elected to that house, it shall become a law. In all such cases, the votes of both houses shall be taken by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if the governor had signed it, unless the general assembly by its adjournment shall prevent its return, in which case it shall not become a law.

General assembly to reconsider rejected bills.

Joint resolutions.

SEC. 11. Every resolution to which the concurrence of the senate and house of representatives may be necessary, except on cases of adjournment, shall be presented to the governor,—and before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill.

Auditor of public accounts.

SEC. 12. There shall be an auditor of public accounts, whom the governor, by and with the advice and consent of the senate, shall appoint. He shall continue in office four years, and shall perform such duties as may be prescribed by law. His office shall be kept at the seat of government.

Compensation of Governor.

SEC. 13. The governor shall, at stated times, receive for his services an adequate salary, to be fixed by law, which shall neither be increased or diminished during his continuance in office, *and which shall never be less than two thousand dollars annually*. (a)

(a) See amendments. sec 5.

Lieutenant governor, election and qualification.

SEC. 14. There shall be a lieutenant governor, who shall be elected at the same time, in the same manner, for the same term, and shall possess the same qualifications as the governor. The electors shall distinguish for whom they vote as governor, and for whom as lieutenant governor.

To be president of the senate.

SEC. 15. The lieutenant governor shall by virtue of his office be president of the senate. In committee of the whole he may debate on all questions; and when there is an equal division, he shall give the casting vote in senate, and also in joint vote of both houses.

Who to act as governor in case of vacancy, &c.

Sec. 16. When the office of governor shall become vacant, by death, resignation, absence from the state, removal from office, refusal to qualify, impeachment, or otherwise, the lieutenant governor, or in case of like disability on his part, the president of the senate pro tempore, or if there be no president of the senate pro tempore, the speaker of the house of representatives, shall possess all the powers, and discharge all the duties of governor, and shall receive for his services the like compensation, until such vacancy be filled, or the governor so absent or impeached shall return or be acquitted.

Election to supply vacancy, when to be ordered.

Sec. 17. Whenever the office of governor shall become vacant, by death, resignation, removal from office, or otherwise, the lieutenant governor, or other person exercising the powers of governor for the time being, shall, as soon as may be, cause an election to be held to fill such vacancy, giving three months previous notice thereof; and the person elected shall not thereby be rendered ineligible to the office of governor for the next succeeding term. Nevertheless, if such vacancy shall happen within eighteen months of the end of the term for which the late governor shall have been elected, the same shall not be filled.

Compensation of Lieut. governor and president of the senate.

Sec. 18. The lieutenant governor, or president of the senate pro tempore, while presiding in the senate, shall receive the same compensation as shall be allowed to the speaker of the house of representatives.

Returns of elections of governor and lieut. governor.

Sec. 19. The returns of all elections of governor and lieutenant governor shall be made to the secretary of state, in such manner as may be prescribed by law.

Contested elections.

Sec. 20. Contested elections of governor and lieutenant governor shall be decided by joint vote of both houses of the general assembly, in such manner as may be prescribed by law.

Secretary of state, appointment, term of service, duties.

Sec. 21. There shall be a secretary of state, whom the governor by and with the advice and consent of the senate, shall appoint. He shall hold his office for four years unless sooner removed on impeachment. He shall keep a register of all the official acts and proceedings of the governor, and when necessary shall attest them; and he shall lay the same, together with all papers relative thereto, before either house of the general assembly whenever required so to do, and shall perform such other duties as may be enjoined on him by law.

Seal of state.

Sec. 22. The secretary of state shall, as soon as may be, procure a seal of state, with such emblems and devices as shall be directed by law, which shall not be subject to change. It shall be called the "*Great Seal of the state of Missouri*;" shall be kept by the secretary of state, and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated.

Sheriff and coroner to be appointed.

SEC. 23. There shall be appointed in each county a sheriff and a coroner, who, until the general assembly shall otherwise provide, shall be elected by the qualified electors at the time and place of electing representatives. They shall serve for two years, and until a successor be duly appointed and qualified, unless sooner removed for misdemeanor in office, and shall be ineligible four years in any period of eight years. The sheriff and coroner shall each give security for the faithful discharge of the duties of his office in such manner as shall be prescribed by law. Whenever a county shall be hereafter established, the governor shall appoint a sheriff and coroner therein, who shall each continue in office untill the next succeeding general election, and until a successor shall be duly qualified.

Vacancies in office of sheriff and coroner.

SEC. 24. When vacancies happen in the office of sheriff or coroner, they shall be filled by appointment of the governor; and the persons so appointed shall continue in office until successors shall be duly qualified, and shall not thereby be rendered ineligible for the next succeeding term.

Election of sheriff and coroner in case of tie or contested election.

SEC. 25. In all elections of sheriff and coroner, when two or more persons have an equal number of votes, and a higher number than any other person, the circuit courts of the counties, respectively, shall give the casting vote; and all contested elections for the said offices shall be decided by the circuit courts respectively, in such manner as the general assembly may by law prescribe.

ARTICLE V.

OF THE JUDICIAL POWER.

Courts.

SECTION 1. The judicial power as to matters of law and equity, shall be vested in a "*Supreme Court*," in a "*Chancellor*," (a) in "*Circuit Courts*," and in such inferior tribunals as the general assembly may, from time to time, ordain and establish.

(a) See amendments, sec. 1 and 2.

Jurisdiction of supreme court.

SEC. 2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under the restrictions and limitations in this constitution provided.

Control over inferior courts.

SEC. 3. The supreme court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of Habeas Corpus, Mandamus, Writs.

Quo Warranto, Certiorari, and other original remedial writs; and to hear and determine the same.

Sec. 4. The supreme court shall consist of three judges, any two of whom shall be a quorum; and the said judges shall be conservators of the peace throughout the state.

Judicial districts.

Sec. 5. The state shall be divided into convenient districts, not to exceed four, in each of which the supreme court shall hold two sessions annually, at such place as the general assembly shall appoint; and when sitting in either district, it shall exercise jurisdiction over causes originating in that district only; provided however, that the general assembly may at any time hereafter direct by law, that the said court shall be held at one place only.

Circuit court jurisdiction.

Terms.

Sec. 6. The circuit court shall have jurisdiction over all criminal cases which shall not be otherwise provided for by law; and exclusive original jurisdiction in all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly. It shall hold its terms in such place in each county as may be by law directed.

Judicial circuits.

Sec. 7. The state shall be divided into convenient circuits, for each of which a judge shall be appointed, who, after his appointment, shall reside, and be a conservator of the peace within the circuit for which he shall be appointed.

Control over inferior tribunals.

Sec. 8. The circuit court shall exercise a superintending control over all such inferior tribunals as the general assembly may establish, and over justices of the peace in each county in their respective circuits.

Chancery court jurisdiction.

(a) See amendments, sec. 1, and 2.

Sec. 9. *The jurisdiction of the court of chancery shall be co-extensive with the state, and the times and places of holding its sessions shall be regulated in the same manner as those of the supreme court.*(a)

Chancery jurisdiction.

(b) Circuit court, see amendments, sec. 1, and 2.

Sec. 10. The *court of chancery* (b) shall have original and appellate jurisdiction in all matters of equity, and a general control over executors, administrators, guardians and minors, subject to appeal in all cases to the supreme court, under such limitations as the general assembly may by law provide.

Inferior courts of chancery may be established.

Sec. 11. Until the general assembly shall deem it expedient to establish inferior courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the court of chancery, in such manner, and under such restrictions, as shall be prescribed by law.

Inferior tribunals.

Sec. 12. Inferior tribunals shall be established in each county for the transaction of all county business, for appointing guardians, for granting letters testamentary, and of administration, and for settling the accounts of executors, administrators and guardians.

Appointment of judges.

Sec. 13. The governor shall nominate, and by and with the advice and consent of the senate, appoint the judges of the supreme court, the judges of the circuit courts, and the chancellor, each of whom shall hold his office during good behavior; and shall receive for his services a compensation which shall not be diminished during his continuance in office, *and which shall not be less than two thousand dollars annually*.(a)

(a) See amendments, sec. 1.

Judges. Qualification.

Sec. 14. No person shall be appointed a judge of the supreme court, nor of a circuit court, nor chancellor, before he shall have attained to the age of thirty years; nor shall any person continue to exercise the duties of any of said offices after he shall have attained to the age of sixty-five years.

Clerks of courts.

Sec. 15. The courts respectively shall appoint their clerks, who shall hold their offices during good behavior. For any misdemeanor in office, they shall be liable to be tried and removed by the supreme court, in such manner as the general assembly shall by law provide.

Judges may be removed by address.

Sec. 16. Any judge of the supreme court or the circuit court, or *the chancellor*,(b) may be removed from office on the address of two thirds of each house of the general assembly to the governor for that purpose; but each house shall state on its respective journal the cause for which it shall wish the removal of such judge or chancellor, and give him notice thereof, and he shall have the right to be heard in his defence in such manner as the general assembly shall by law direct; but no judge nor chancellor shall be removed in this manner for any cause for which he might have been impeached.

(b) See amendments, sec 1.

Justices of the peace.

Sec. 17. In each county there shall be appointed as many justices of the peace as the public good may be thought to require. Their powers and duties, and their duration in office, shall be regulated by law.

Attorney general.

Sec. 18. An attorney general shall be appointed by the governor, by and with the advice and consent of the senate. He shall remain in office four years, and shall perform such duties as shall be required of him by law.

Style of writs and process.

Indictments.

Sec. 19. All writs and process shall run, and all prosecutions shall be conducted, in the name of the "*State of Missouri*;" all writs shall be tested by the clerk of the court from which they shall be issued, and all indictments shall conclude, "*against the peace and dignity of the State*."

ARTICLE VI.

OF EDUCATION.

Education to be en-

Section 1. Schools and the means of education shall forever be encouraged in this state; and the general assemcouraged and lands preserved.

bly shall take measures to preserve from waste or damage such lands as have been, or hereafter may be granted by the United States for the use of schools within each township in this state, and shall apply the funds which may arise from such lands in strict conformity to the object of the grant: one school, or more, shall be established in each township as soon as practicable and necessary, where the poor shall be taught gratis.

University lands to be improved and funds applied.

SEC. 2. The general assembly shall take measures for the improvement of such lands as have been, or hereafter may be granted by the United States to this state for the support of a seminary of learning; and the funds accruing from such lands by rent or lease, or in any other manner, or which may be obtained from any other source for the purposes aforesaid, shall be and remain a permanent fund to support a university for the promotion of literature, and of the arts and sciences; and it shall be the duty of the general assembly, as soon as may be, to provide effectual means for the improvement of such lands, and for the improvement and permanent security of the funds and endowments of such institution.

ARTICLE VII.

OF INTERNAL IMPROVEMENT.

Internal improvement

In roads and navigable waters.

Internal improvement shall forever be encouraged by the government of this state; and it shall be the duty of the general assembly, as soon as may be, to make provision by law for ascertaining the most proper objects of improvement in relation both to roads and navigable waters; and it shall also be their duty to provide by law for a systematic and economical application of the funds appropriated to those objects.

ARTICLE VIII.

OF BANKS.

Bank.

The general assembly may incorporate one banking company, and no more to be in operation at the same time.

Branches.

Capital stock.

The bank to be incorporated may have any number of branches, not to exceed five, to be established by law; and not more than one branch shall be established at any one session of the general assembly. The capital stock of the bank to be incorporated shall never exceed five millions of dollars, at least one half of which shall be reserved for the use of the state.

ARTICLE IX.

OF THE MILITIA.

Militia officers how appointed.

SECTION 1. Field officers and company officers shall be elected by the persons subject to militia duty within their respective commands. Brigadiers general shall be elected by the field officers of their respective brigades; and majors general by the brigadiers and field officers of their respective divisions, until otherwise directed by law.

Staff.

SEC. 2. General and field officers shall appoint their officers of the staff.

Adjutant general.

SEC. 3. The governor shall appoint an adjutant general, and all other militia officers whose appointments are not otherwise provided for in this constitution.

ARTICLE X.

OF MISCELLANEOUS PROVISIONS.

General assembly not to interfere with disposal of the soil.

SECTION 1. The general assembly of this state shall never interfere with the primary disposal of the soil by the United States, nor with any regulation congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States, nor shall lands belonging to persons residing out of the limits of this state ever be taxed higher than the lands belonging to persons residing within the state.

Navigation.

SEC. 2. The state shall have concurrent jurisdiction on the river Mississippi, and on every other river bordering on the said state, so far as the said river shall form a common boundary to the said state and any other state or states now, or hereafter to be formed, and bounded by the same; and the said river Mississippi, and the navigable rivers and waters leading into the same, whether bordering on, or within this state, shall be common highways, and forever free to the citizens of this state and of the United States, without any tax, duty, impost or toll therefor imposed by the state.

ARTICLE XI.

OF THE PERMANENT SEAT OF GOVERNMENT.

Commissioners to be appointed.

SECTION 1. The general assembly at their first session shall appoint five commissioners for the purpose of selecting a place for the permanent seat of government, whose duty it shall be to select four sections of the land of the United States which shall not have been exposed to public sale.

A site to be selected.

SEC. 2. If the commissioners believe the four sections of land so by them to be selected be not a suitable and proper situation for the permanent seat of government, they shall select such other place as they deem most proper for that purpose, and report the same to the general assembly at the time of making their report provided for in the first section of this article; provided, that no place shall be selected which is not situated on the bank of the Missouri river, and within forty miles of the mouth of the river Osage.

Within what limits.

Gen. assembly to determine the location.

SEC. 3. If the general assembly determine that the four sections of land which may be selected by authority of the first section of this article, be a suitable and proper place for the permanent seat of government, the said commissioners shall lay out a town thereon, under the direction of the general assembly; but if the general assembly deem it most expedient to fix the permanent seat of government at the place to be selected by authority of the second section of this article, they shall so determine, and in that event shall authorize the said commissioners to purchase any quantity of land, not exceeding six hundred and forty acres, which may be necessary for the purpose aforesaid; and the place so selected shall be the permanent seat of government of this state from and after the first day of October, one thousand eight hundred and twenty-six.

Selection of comm'rs.

SEC. 4. The general assembly, in selecting the above mentioned commissioners, shall choose one from each extreme part of the state, and one from the centre, and it shall require the concurrence of at least three of the commissioners to decide upon any part of the duties assigned them.

ARTICLE XII.

MODE OF AMENDING THE CONSTITUTION.

How amendments proposed & ratified

The general assembly may at any time propose such amendments to this constitution as two thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state three several times, at least twelve months before the next general election; and if at the first session of the general assembly after such general election, two thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution; provided, that such proposed amendments shall be read on three several days, in each house, as well when the same are proposed, as when they are finally ratified.

ARTICLE XIII.

DECLARATION OF RIGHTS.

That the general, great and essential principles of liberty and free government may be recognized and established, WE DECLARE,

Sovereign power in the people.

1. That all political power is vested in, and derived from, the people:

2. That the people of this state have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their constitution and form of government, whenever it may be necessary to their safety and happiness:

Right of protection, bearing arms, &c.

3. That the people have the right peaceably to assemble for their common good, and to apply to those vested with the powers of government for redress of grievances, by petition or remonstrance; and that their right to bear arms in defence of themselves and of the state cannot be questioned:

Rights of conscience.

Religious opinions.

4. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to erect, support or attend any place of worship, or to maintain any minister of the gospel or teacher of religion; that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested or restrained in his religious professions or sentiments, if he do not disturb others in their religious worship:

Corporation.

5. That no person, on account of his religious opinions, can be rendered ineligible to any office of trust or profit under this state; that no preference can ever be given by law to any sect or mode of worship; and that no religious corporation can ever be established in this state:

Elections.

6. That all elections shall be free and equal:

Administration of justice.

7. That courts of justice ought to be open to every person, and certain remedy afforded for every injury to person, property, or character; and that right and justice ought to be administered without sale, denial or delay; and that no private property ought to be taken or applied to public use, without just compensation:

Trial by jury

8. That the right of trial by jury shall remain inviolate:

Right of accused in criminal cases.

9. That in all criminal prosecutions, the accused has the right to be heard by himself and his counsel; to demand the nature and cause of accusation; to have compulsory process for witnesses in his favor; to meet the witnesses against him face to face; and, in prosecutions on presentment or indictment, to a speedy trial by an impartial jury of the vicinage; that the accused cannot be compelled to give evidence against himself, nor be deprived of life, liberty, or property, but by the judgment of his peers or the law of the land:

No person to be twice tried for same offence.

10. That no person, after having been once acquitted by a jury, can, for the same offence, be again put in jeopardy of life or limb; but if in any criminal prosecution the jury be divided in opinion at the end of the term, the court before which the trial shall be had may, in its discretion, discharge the jury, and commit or bail the accused for trial at the next term of such court:

Bail and habeas corpus.

11. That all persons shall be bailable by sufficient sureties, except for capital offences when the proof is evident

or the presumption great: and the privilege of the writ of *habeas corpus* cannot be suspended, unless when, in cases of rebellion or invasion, the public safety may require it:

Bail & fines. 12. That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted:

No search, except on oath. 13. That the people ought to be secure in their persons, papers, houses, and effects, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, can issue, without describing the place to be searched, or the person or thing to be seized, as nearly as may be, nor without probable cause, supported by oath or affirmation:

Prosecutions for crimes by indictment. 14. That no person can, for an indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger, or by leave of the court, for oppression or misdemeanor in office:

Treason, evidence, conviction. 15. That treason against the state can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason unless on the testimony of two witnesses to the same overt act, or on his own confession in open court; that no person can be attainted of treason or felony by the general assembly; that no conviction can work corruption of blood or forfeiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death; and when any person shall be killed by casualty, there ought to be no forfeiture by reason thereof:

Freedom of speech and of the press. 16. That the free communication of thoughts and opinions is one of the invaluable rights of man, and that every person may freely speak, write and print on any subject, being responsible for the abuse of that liberty; that in all prosecutions for libels, the truth thereof may be given in evidence, and the jury may determine the law and the facts under the direction of the court:

Expost facto laws, &c. 17. That no *expost facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, can be passed, nor can the person of a debtor be imprisoned for debt after he shall have surrendered his property for the benefit of his creditors, in such manner as may be prescribed by law:

Exempt from militia duty. 18. That no person who is religiously scrupulous of bearing arms, can be compelled to do so, but may be compelled to pay an equivalent for military service, in such manner as shall be prescribed by law; and that no priest, preacher of the gospel, or teacher of any religious persuasion or sect, regularly ordained as such, be subject to militia duty, or compelled to bear arms:

Taxation.

19. That all property subject to taxation in this state shall be taxed in proportion to its value:

Titles, &c.

20. That no title of nobility, hereditary emolument, privilege or distinction shall be granted, nor any office created the duration of which shall be longer than the good behaviour of the officer appointed to fill the same:

Migration.

21. That emigration from this state cannot be prohibited:

Military subordinate to civil power.

22. That the military is, and in all cases and at all times shall be, in strict subordination to the civil power; that no soldier can, in time of peace, be quartered in any house without the consent of the owner,—nor in time of war, but in such manner as may be prescribed by law; nor can any appropriation for the support of an army be made for a longer period than two years.

SCHEDULE.

Writs, actions, &c not affected by change of government.

Sec. 1. That no inconvenience may arise from the change of government, we declare that all writs, actions, prosecutions, judgments, claims, and contracts of individuals and of bodies corporate, shall continue as if no change had taken place; and all process which may, before the third Monday in September next, be issued under the authority of the Territory of Missouri, shall be as valid as if issued in the name of the state.

Laws, territorial.

Sec. 2. All laws now in force in the Territory of Missouri which are not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the general assembly.

Fines, &c.

Sec. 3. All fines, penalties, forfeitures and escheats accruing to the Territory of Missouri, shall accrue to the use of the state.

Recognizances.

Bonds.

Criminal prosecutions

Sec. 4. All recognizances heretofore taken, or which may be taken before the third Monday in September next, shall remain valid, and shall pass over to, and may be prosecuted in the name of the state; and all bonds executed to the governor of the territory, or to any other officer or court in his official capacity, shall pass over to the governor or other proper state authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which have arisen, or which may arise before the third Monday in September next, and which shall then be depending, shall be prosecuted to judgment and execution in the name of the state. All actions at law which now are, or which, on the third Monday in September next, may be depending in any of the courts of record in the Territory of Missouri, may be commenced in, or transferred to any court of record of the state which shall have jurisdiction of the subject matter thereof; and all suits in equity may, in like manner, be commenced in, or transferred to the court of chancery.

Officers continued. Sec. 5. All officers civil and military now holding commissions under authority of the United States, or of the Territory of Missouri, shall continue to hold and exercise their respective offices until they shall be superceded under the authority of the state; and all such officers holding commissions under the authority of the Territory of Missouri shall receive the same compensation which they have hitherto received, in proportion to the time they shall be so employed.

1st meeting of general assembly. Sec. 6. The first meeting of the general assembly shall be at St. Louis, with power to adjourn to any other place; and the general assembly at the first session thereof, shall fix the seat of government until the first day of October, one thousand eight hundred and twenty-six; and the first session of the general assembly shall have power to fix the compensation of the members thereof, any thing in the constitution to the contrary notwithstanding.

Apportionment of representation. Sec. 7. Until the first enumeration shall be made, as directed in this constitution, the county of Howard shall be entitled to eight representatives; the county of Cooper to four representatatives; the county of Montgomery to two representatives; the county of Lincoln to one representative; the county of Pike to two representatives; the county of St. Charles to three representatives; the county of St. Louis to six representatives; the county of Franklin to two representatives; the county of Jefferson to one representative; the county of Washington to two representatives; the county of Ste. Genevieve to four representatives; the county of Cape Girardeau to four representatives; the county of New Madrid to two representatives; the county of Madison to one representative; the county of Wayne to one representative; and that part of the county of Lawrence situated within this state, shall attach to, and form part of the county of Wayne until otherwise provided by law, and the sheriff of the county of Wayne shall appoint the judges of the first election, and the place of holding the same, in the part thus attached; and any person who shall have resided within the limits of this state five months previous to the adoption of this constitution, and who shall be otherwise qualified as prescribed in the third section of the third article thereof, shall be eligible to the house of representatives, any thing in this constitution to the contrary notwithstanding.

Senatorial districts.

Sec. 8. For the first election of senators, the state shall be divided into districts, and the apportionment shall be as follows, that is to say: the counties of Howard and Cooper shall compose one district, and elect four senators; the counties of Montgomery and Franklin shall compose one district, and elect one senator; the county of St. Charles shall compose one district, and elect one senator; the counties of Lincoln and Pike shall compose one district, and elect one senator; the county of St. Louis shall compose one district, and elect two senators; the counties of Washington and Jefferson shall compose one district, and elect one senator: the county of Ste. Genevieve shall compose one district, and elect one senator; the counties of Madison and Wayne shall compose one district and elect one senator; the counties of Cape Girardeau and New Madrid shall compose one district, and elect two senators; and in all cases where a senatorial district consists of more than one county, it shall be the duty of the clerk of the county second named in that district, to certify the returns of the senatorial election within their proper county to the clerk of the county first named, within five days after he shall have received the same; and any person who shall have resided within the limits of this state five months previous to the adoption of this constitution, and who shall be otherwise qualified, as prescribed in the fifth section of the third article thereof, shall be eligible to the senate of this state, any thing in this constitution to the contrary notwithstanding.

Writs for first election.

Sec. 9. The president of the convention shall issue writs of election to the sheriffs of the several counties (or in case of vacancy to the coroners) requiring them to cause an election to be held on the fourth Monday in August next, for a governor, a lieutenant governor, a representative in the congress of the United States for the residue of the sixteenth congress; a representative for the seventeenth congress; senators and representatives for the general assembly; sheriffs and coroners; and the returns of all township elections held in pursuance thereof, shall be made to the clerk of the proper county within five days after the day of election; and any person who shall reside within the limits of this state at the time of the adoption of this constitution, and who shall be otherwise qualified as prescribed in the tenth section of the third article thereof, shall be deemed a qualified elector, any thing in this constitution to the contrary notwithstanding.

Returns of votes for governor, &c. Sec. 10. The elections shall be conducted according to the existing laws of the Missouri territory. The clerks of the circuit courts of the several counties shall certify the returns of the election of governor and lieutenant governor, and transmit the same to the speaker of the house of representatives at the temporary seat of government, in such time that they may be received on the third Monday of September next. As soon as the general assembly shall be organized, the speaker of the house of representatives and the president pro tempore of the senate shall, in the presence of both houses, examine the returns, and declare who are duly elected to fill those offices, and if any two or more persons shall have an equal number of votes, and a higher number than any other person, the general assembly shall determine the election in the manner herein before provided: and the returns of the election for member of congress shall be made to the secretary of state within thirty days after the day of election.

Oath of office. Sec. 11. The oaths of office herein directed to be taken, may be administered by any judge or justice of the peace, until the general assembly shall otherwise direct.

Seal. Sec. 12. Until a seal of state be provided, the governor may use his private seal.

Done by the representatives of the people of Missouri in convention assembled, at the town of Saint Louis, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and twenty, and of the independence of the United States of America the forty-fifth.

DAVID BARTON,
President of the convention, and representative from the county of St. Louis.

From the county of Cape Girardeau,
Stephen Byrd, Alexander Buckner,
James Evans, Joseph M'Ferron.
Richard S. Thomas,

From the county of Cooper,
Robert P. Clark, William Lillard.
Robert Wallace,

From the county of Franklin,
John G. Heath.

From the county of Howard,
Nich's. S. Burckhartt, Jonathan S. Findlay,
Duff Green, Benjamin H. Reeves.
John Ray,

From the county of Jefferson,
S. Hammond.

From the county of Lincoln,
Malcolm Henry.

From the county of Montgomery,
Jonathan Ramsay, James Talbott.

From the county of Madison,
Nathaniel Cook.

From the county of New-Madrid,
Robert D. Dawson, Christopher G. Houts.

From the county of Pike,
Stephen Cleaver.

From the county of St. Charles,
Hiram H. Baber, Nathan Boone.
Benjamin Emmons,

From the county of Ste. Genevieve,
R. T. Brown, John D. Cook,
H. Dodge, John Scott.

From the county of St. Louis,
Edward Bates, Pierre Chouteau, Jun.
A. McNair, Bernard Pratte,
William Rector, Thomas F. Riddick.
John C. Sullivan,

From the county of Washington,
Jno. Rice Jones, John Hutchings.
Samuel Perry,

From the county of Wayne,
Elijah Bettis.

Attest, WM. G. PETTUS, *Secretary of the convention.*

AMENDMENTS TO THE CONSTITUTION,

Proposed by the last General Assembly, at their special session in June, one thousand eight hundred and twenty-one, and ratified by this General Assembly at their first session, begun and held at St. Charles, on the first Monday of November, one thousand eight hundred and twenty-two.

Chancery courts.

Section 1. The office of chancellor is hereby abolished, and the supreme court and circuit courts shall exercise chancery jurisdiction, in such manner and under such restriction as shall be prescribed by law. Passed in senate—yeas fifteen, nays one; ratified by the house of representatives—yeas forty-six, nays five.

Judiciary powers.

Sec. 2. The judicial power, as to matters of law and equity, shall be vested in a supreme court, in circuit courts, and in such inferior tribunals as the general assembly may, from time to time, ordain and establish; provided, the general assembly may establish a court or courts of chancery, and from time to time prescribe the jurisdiction, powers and duties thereof. Passed in senate—yeas fifteen, nays one; ratified by the house of representatives—yeas forty-nine, nays two.

Compensation of judges.

SEC. 3. The judges of the supreme court, and the judges of the circuit courts and chancellor, shall at stated times receive a compensation for their services, to be fixed by law. Passed in senate—yeas twelve, nays four; ratified by the house of representatives—yeas forty-five, nays seven.

U. S. officers.

SEC. 4. No person holding an office of profit under the United States, and commissioned by the president, shall, during his continuance in such office, be eligible, appointed to, hold, or exercise, any office of profit under this state. Passed in senate—yeas sixteen; ratified by the house of representatives—yeas forty-nine, nays two.

Salary of governor.

SEC. 5. So much of the thirteenth section of the fourth article of the constitution of this state, as provides that the compensation of the governor shall never be less than two thousand dollars annually, shall be repealed. Passed in senate—yeas sixteen; ratified by the house of representatives—yeas fifty-one.

Salaries of judges.

SEC. 6. So much of the thirteenth section of the fifth article of the constitution of this state, as provides that the compensation of the judges of the supreme and circuit courts and chancellor shall never be less than two thousand dollars annually, shall be repealed. Passed in senate—yeas sixteen; ratified by the house of representatives—yeas fifty-one.

Judges.

SEC. 7. The offices of the judges of the supreme court and of the judges of the circuit courts, shall expire at the end of the first session of the next general assembly of this state, or as soon as their successors are respectively elected and qualified. Passed in senate—yeas fourteen, nays two; ratified by the house of representatives—yeas forty, nays eleven.

WILLIAM H. ASHLEY,
President of the Senate.

HENRY S. GEYER,
Speaker of the House of Representatives, and member from St. Louis county.

MEMBERS OF THE SENATE.

John S. Ball,
William Biggs,
Joseph Bogy,
A. Buckner,
Abraham Byrd,
Bennet Clark,
Benjamin Emmons,
Duff Green,
David Jones,
David Logan,
James M'Allister,
Samuel Perry,
Benjamin H. Reeves,
James Talbott,
A. J. Williams,
B. Young.

BERNARD O'NEILL, *Secretary of the Senate.*

MEMBERS OF THE HOUSE OF REPRESENTATIVES.

Alfred Basye,
E. [illegible]es,
Eli[illegible] Bettis,
George Burckhartt,
Nicholas S. Burckhartt,
G. [illegible] Bird,
Isaac Clark,
Sim[illegible] Cockrell,
Nathaniel Cook,
Philip Cole,
Daniel Dunklin,
John English,
John Evans,
Asa [illegible]inly,
Joseph Frizel,
B. [illegible]och,
John Hall,
Be[illegible] F. Hickox,
Frederick Hyatt,
William Johnson,
Peter Journey,
James Kegans,
Richard Kerr,
Henry Lane,
A[illegible]stan Longan,
S. [illegible] M'Knight,
John Miller,
Isidore Moore,
James W. Moss,
James North,
Jordan O'Bryan,
John O'Fallon,
Ignatius P. Owens,
Samuel C. Owens,
Jonathan Ramsay,
Stephen Rector,
James H. Relfe,
Edmund Rutter,
Felix Scott,
George H. Scripps,
Robert Simpson,
Philip Sitton,
Chauncy Smith,
Robert M. Stevenson,
George Taylor,
Stephen Trigg,
Richard H. Waters,
N. W. Watkins,
Robert William Wells,
D. C. Westerfield,
Peter Wright.

THOMPSON DOUGLASS,
Clerk of the House of Representatives.

◆

ADMISSION OF MISSOURI INTO THE UNION.

RESOLUTION providing for the Admission of the State of Missouri into the Union, on a certain condition.

2d March, 1821.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Missouri shall be admitted into this Union on an equal footing with the original states, in all respects whatever, upon the fundamental condition, that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said state to congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the states of this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States: *Provided*, That the legislature of the said state, by a solemn public act, shall declare the assent of the said state to the said fundamental condition, and shall transmit to the president of the United

Missouri admitted into the Union on condition that the 4th clause of the 26th section of the 3d article of her Constitution, shall never be construed to authorize a law excluding citizens of any State from constitutional privileges, &c.

Proviso: the

Legislature of the State to declare its assent; the President to proclaim the fact, &c.

States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof the president, by proclamation, shall announce the fact; whereupon, and without any further proceeding on the part of Congress, the admission of the said state into this Union shall be considered as complete.

[*Approved*, 2 *March*, 1821.]

◆

A Solemn Public Act, declaring the assent of this state to "the Fundamental Condition" contained in a resolution passed by the congress of the United States, providing for the admission of the state of Missouri into the union, on a certain condition.

Act of Assent by Missouri, 26 June, 1821.

Reference to the Resolution of Congress of 2d March, 1821.

Whereas the senate and house of representatives of the United States, by their resolution, approved on the second day of March, in the year of our Lord eighteen hundred and twenty-one, did declare that Missouri shall be admitted into this union upon an equal footing with the original states, in all respects whatever, upon the fundamental condition that the fourth clause of the twenty-sixth section of the third article of the constitution, submitted on the part of said state to congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the states in this union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States: *Provided*, That the Legislature of the said state, by a solemn public act, shall declare the assent of said state to the said fundamental condition, and shall transmit to the president of the United States, on or before the fourth Monday of November next, an authentic copy of the said act, upon the receipt whereof the president, by proclamation, shall announce the fact: whereupon, and without any further proceeding on the part of congress, the admission of said state into this union shall be considered as complete. Now, forasmuch as the good people of this state have, by the most solemn and public act in their power, virtually assented to the said fundamental condition, when, by their representatives in full and free convention assembled, they adopted the constitution of this state and consented to be incorporated into the federal union and governed by the constitution of the United States, which, among other things, provides that the said constitution, and the laws of the United States made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the su-

Declaration of a previous virtual assent.

preme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or law of any state to the contrary notwithstanding: And although this general assembly are of opinion that the congress of the United States have no constitutional power to annex any condition to the admission of this state into the federal union, and that this general assembly have no power to change the operation of the constitution of this state, except in the mode prescribed by the constitution itself:—Nevertheless, as the congress of the United States have desired this general assembly to declare the assent of this state to said fundamental condition, and forasmuch as such declaration will neither restrain or enlarge, limit or extend, the operation of the constitution of the United States, or of this state; but the said constitutions will remain, in all respects, as if the said resolution had never passed, and the desired declaration was never made, and because such declaration will not divest any power, or change the duties of any of the constituted authorities, of this state or of the United States, nor impair the rights of the people of this state, or impose any additional obligation upon them, but may promote an earlier enjoyment of their vested federal rights, and this state being moreover determined to give to her sister states, and to the world, the most unequivocal proof of her desire to promote the peace and harmony of the union: Therefore,

Opinion that Congress have no Constitutional Power to prescribe any Condition.

General Assembly have no power to change the Constitution, except, &c.

The Declaration required will neither limit nor extend the operation of the constitution of the U. S. or that of this state.

Be it enacted and declared by the general assembly of the state of Missouri, and it is hereby solemnly and publicly enacted and declared, That this state has assented, and does assent, that the fourth clause of the twenty-sixth section of the third article of the constitution of this state, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the United States shall be excluded from the enjoyment of any of the privileges and immunities to which such citizens are entitled under the constitution of the United States. [*Approved*, 26*th June*, 1821.]

The state of Missouri, therefore, assents & complies with the condition prescribed by congress.

BY THE PRESIDENT OF THE UNITED STATES.

A PROCLAMATION.

10th August, 1821.

Whereas the congress of the United States, by a joint resolution of the second day of March last, entitled "Resolution providing for the admission of the state of Missouri into the union on a certain condition," did determine and declare—"That Missouri should be admitted into this union on an equal footing with the original states, in all

Proclamation admitting Missouri into the Union.

respects whatever, upon the fundamental condition that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said state to congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the states of this union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States: *Provided*, That the legislature of said state by a solemn public act, shall declare the assent of the said state to the said fundamental condition, and shall transmit to the president of the United States, on or before the first Monday in November next, an authentic copy of said act; upon the receipt whereof, the president, by proclamation, shall announce the fact; whereupon, and without any further proceeding on the part of congress, the admission of the said state into this union shall be considered as complete:"

The state of Missouri has assented to the condition prescribed by congress.

And whereas, by a solemn public act of the assembly of the said state of Missouri, passed on the twenty-sixth of June, in the present year, entitled "A solemn public act, declaring the assent of this state to the fundamental condition contained in a resolution passed by the congress of the United States, providing for the admission of the state of Missouri into the Union on a certain condition," an authentic copy whereof has been communicated to me, it is solemnly and publicly enacted and declared, that that state has assented, and does assent, that the fourth clause of the twenty-sixth section of the third article of the constitution of said state "shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the United States shall be excluded from the enjoyment of any of the privileges and immunities to which such citizens are entitled under the constitution of the United States:" Now, therefore, I, James Monroe, President of the United States, in pursuance of the resolution of congress aforesaid, have issued this my proclamation, announcing the fact, that the said state of Missouri has assented to the fundamental condition required by the resolution of congress aforesaid; whereupon the admission of the said state of Missouri into this Union is declared to be complete.

The president announces the fact.

Admission of Missouri declared complete.

In testimony whereof, I have caused the seal of the United States of America to be affixed to these Presents, and signed the same with my hand. Done at the city of Washington, the tenth day of August, 1821; and of the Independence of the said United States of America the forty-sixth.

[L. S.]

By the President: JAMES MONROE.

John Quincy Adams, *Secretary of State*.

STATUTE LAWS

OF THE

State of Missouri.

REVISED, DIGESTED AND PROMULGATED, PURSUANT TO THE DIRECTIONS AND UNDER THE AUTHORITY OF THE GENERAL ASSEMBLY.

◆

FREDERICK BATES, *Governor,*
BENJ. H. REEVES, *Lieut. Gov. and President of the Senate,*
HENRY S. GEYER, *Speaker of the House of Representatives.*

◆

ACADEMIES.

JACKSON ACADEMY.

AN ACT to establish an Academy in the town of Jackson, in the county of Cape Girardeau.

14th October 1820.

SECTION 1. *Be it enacted by the General Assembly of the state of Missouri,* That an academy be, and the same is hereby, established in the town of Jackson, in the county of Cape Girardeau, on one of the following lots designated by the plan of said town, and set apart for that purpose, to wit: number ninety-two, ninety-three, one hundred and four, one hundred and five, one hundred and sixteen, one hundred and seventeen, one hundred and ninety-eight, and one hundred and ninety-nine; and shall be known by the name of the Jackson Academy.

Jackson Academy established.

SEC. 2. *Be it further enacted,* That David Armour, Joseph Frizel, Thomas Neale, Van B. D'Lashmutt, and William Surrell, shall be, and are hereby constituted, a body corporate, to be known by the name of the Trustees of the Jackson Academy, and by that name shall have perpetual succession, and a common seal, which aforesaid trustees shall continue in office four years, and no longer, unless re-appointed; and the said county court or circuit court (as the case may be) shall, from time to time, appoint a like number of trustees for the term of four years.

Trustees appointed.

SEC. 3. *Be it further enacted,* That when a vacancy happens by death, resignation, refusal to act, or otherwise, of any of the trustees aforesaid, or their successors, the county court, or in case there is no county court, the circuit court shall appoint a fit person or persons to fill such vacancy or vacancies, and the persons thus appointed from

Vacancies in the offices of trustees how filled.

time to time shall be invested with the same power and authority as if specially named in this act, and by the name and style of the Trustees of the Jackson Academy, may sue or be sued, implead or be impleaded, in any court of law or equity, or other jurisdiction having cognizance of the case.

Power of the trustees.

SEC. 4. *Be it further enacted*, That the said trustees and their successors shall have power in their corporate capacity to receive by donation any lands, tenements, hereditaments, monies, rents, goods and chattels, and to hold the same by the name aforesaid to them and their successors for ever, for the use and benefit of said academy. And they are authorized to take such measures as they may think proper for the improvement, leasing or renting such land or lands as may belong to said institution, and to sell or dispose of such personal property as may belong thereto, for the benefit thereof, as they may think expedient.

Time and manner of meeting.

Clerk and treasurer to be appointed.

SEC. 5. *Be it further enacted*, That the person first named herein, or in case of his absence, neglect, or refusal to act, the next named, shall give notice of the time and place of holding the first meeting of the trustees; and on the attendance of a majority thereof, they shall appoint a chairman, clerk, and a treasurer, out of their own body, when it shall become necessary. The treasurer shall give bond and sufficient security for the proper discharge of his duty. The chairman, clerk, treasurer, and each of the trustees, shall severally take an oath or affirmation, to be administered by some judge or justice of the peace, well and truly to exercise the duties of their office, and thereafter the chairman, or any two of the trustees, may call a meeting of the board; and the said trustees shall have power to adjourn from day to day, to make and ordain such by-laws, rules and ordinances for the regulation of said academy, as they may deem proper, not inconsistent with the laws of congress or of this state.

No preference in the choice of officers shall be given on account of religious persuasion.

SEC. 6. *Be it further enacted*, That in the choice of trustees, professors, teachers and students, no preference shall ever be given, nor discrimination made, on account of religious opinions, nor shall the trustees, professors or teachers, at any time, make or enact any by-laws, ordinances, or regulations, that will or may in any wise control or interfere with the rights of conscience or the free exercise of religious worship.

A majority of trustees necessary to act.

SEC. 7. *Be it further enacted*, That it shall require the consent of a majority of said trustees to employ a tutor or tutors, and to fix their salaries, or to dismiss them from service; and three shall be a sufficient number to do any other business; and their clerk shall keep a fair copy of their proceedings: *Provided*, That the said trustees shall never be entitled to any pay or compensation for their services.

SEC. 8. *Be it further enacted*, That the commissioners of the court house and jail for said county, are hereby authorized and required to make a transfer, by deed of conveyance, of the aforesaid eight lots in said town to the aforesaid trustees, for the use and benefit of said academy, and that all acts coming within the purview of this act, shall be, and the same are hereby repealed.

Commissioners of court house and jail to convey lot to trustees.

SEC. 9. *Be it further enacted*, That the said trustees shall, when required, lay before the general assembly of this state their records and proceedings, together with a statement of the funds and appropriations belonging and appertaining to said academy.

Trustees to lay before general assembly an account of their proceedings.

SEC. 10. This act shall commence and be in force from and after the passage thereof.

[*Approved, October* 14, 1820.]

◆

ST. CHARLES AND FRANKLIN ACADEMIES.

AN ACT establishing an Academy in the town of St. Charles, and an Academy in the town of Franklin, state of Missouri.

16th Nov. 1820.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That an academy be, and the same is hereby established in the town of St. Charles, state of Missouri, which shall be called and known by the name of the St. Charles Academy.

St. Charles academy established.

SEC. 2. *Be it further enacted*, That Thomas Lindsay, Amos Kibby, Joseph W. Garrity, John Jacoby, Solomon Whitley, Seth Millington, William Christy, Jun., Hiram H. Baber, Nathaniel B. Tucker, Daniel Griffith, John B. Callaway, Nathan Boon, be, and they are hereby constituted a body politic and corporate, to be known by the name of the Trustees of the St. Charles Academy, and by that name shall have perpetual succession and a common seal.

Trustees.

Body politic & corporate.

SEC. 3. *Be it further enacted*, That when a vacancy may happen in said board, or their successors, by death, resignation, removal or otherwise, the county court or such other tribunal as shall be established by law for the transaction of all county business, shall nominate and appoint a fit and proper person or persons to supply such vacancy or vacancies, and the person so nominated and appointed from time to time, shall be invested with the same powers and authority as if specially named in the provisions of this act; and by the name and style of the Trustees of the St.

Vacancies, how supplied

Style.

Powers.

Charles Academy, they may sue or be sued, implead or be impleaded, in any court of law or equity in the said state of Missouri.

Further powers.

Sec. 4. *Be it further enacted*, That the said trustees and their successors shall have full power in their corporate capacity to hold by gift, grant, demise, devise, or otherwise, any lands, tenements, hereditaments, monies, rents, goods or chattels, of whatever kind soever, the same may be, which is given, granted, devised, demised to, or purchased by them, for and to the use of the aforesaid academy; and may sell and dispose of any personal property, in such manner as they or a majority of them shall think most conducive to the interest and prosperity of said academy.

Duties.

Sec. 5. *Be it further enacted*, That the board of trustees as aforesaid, shall take into their consideration and examine the state and situation of the grants and donations which have been heretofore made by an act of the congress of the United States, of the thirteenth day of June, one thousand eight hundred and twelve; and devise means for securing the said town lots, out lots, and such other lots and lands as were by the act aforesaid granted to the inhabitants of the town of St. Charles, for the use of schools, and for putting them, with such other donations as may hereafter be made for the purpose aforesaid, in a state of profit to said institution.

English and French language to be taught.

Poor children to be taught the rudiments of English, gratis.

Sec. 6. *Be it further enacted*, That it shall be the duty of the trustees of the academy aforesaid, to cause at all times the English and French languages to be taught in said academy, together with such other languages and sciences as the funds of the said institution will permit; and as soon as the funds may, in the opinion of the board, justify it, they shall cause to be received and educated in the said academy, orphans and the children of such persons as may be unable to defray the expenses of their education, who shall be taught the rudiments of an English education, and the higher branches of literature, if the said trustees shall think them susceptible of the same, without fee or reward.

Preference not to be given, on account of religious opinions.

No by laws to interfere with the free exercise of religious worship.

Sec. 7. *Be it further enacted*, That in the choice of trustees, professors, teachers and students, no preference shall ever be given, nor discrimination made, on account of religious opinions; nor shall the trustees, professors or teachers, at any time make or enact by-laws, or ordinances, or regulations, that will or may in any wise control or interfere with the rights of conscience or the free exercise of religious worship.

Stated meetings.

Sec. 8. *Be it further enacted*, That there shall be annually two stated meetings of the said board of trustees, to wit: on the first Mondays in January and July. The chairman of the board, at the request of any two of the members, shall have power to call a special meeting, by giving five days previous notice of such meeting; a majority of said trustees, at any stated, adjourned, or special meeting, shall form a board or quorum, and shall be capable of doing and transacting all the business and concern of the academy, and particularly of entering into any contract or contracts for erecting or repairing any building or buildings for the use of said institution—of making and enacting any by-laws or ordinances for the government of the same, not contrary to the provisions of this act,nor repugnant to the laws and constitution of the state of Missouri, nor the laws and constitution of the United States. They shall have power to elect and appoint the principal professor and teachers of said academy—of agreeing with them for their salaries and stipends—of removing all or any of them for a breach of the laws and ordinances of said institution, or any moral delinquency, or other causes—of appointing committees of their own body to carry into execution the resolutions and ordinances of the board—of appointing a chairman, treasurer and secretary out of their own number, and stewards, managers, and all other necessary and customary officers, for taking care of the estate, and managing the concerns of the institution.

Special meeting.

A majority to form a quorum.

By-laws not contrary to law or the constitution.

Professors & teachers how appointed.

May appoint committees.

Officers of the board.

Sec. 9. *Be it further enacted*, That the chairman, treasurer, secretary, and other members of the board, shall severally, before they enter upon the duties of their appointments, take an oath or affirmation, before any judge or justice of the peace, duly qualified to administer the same, well and truly to exercise and discharge the duties of their respective appointments according to the best of their abilities.

Officers to take an oath or affirmation.

Oath.

Sec. 10. *Be it further enacted*, That the person first named in this act as one of the board of trustees, or in case of his absence, neglect or refusal to act, the next named person is authorized and empowered to call the first meeting of the board, at such time and place as he may think proper; and when convened, the said trustees shall appoint a chairman, and adopt such regulations for their own proceedings and government as they may deem necessary.

Person authorized to call the first meeting.

Chairman.

Sec. 11. *Be it further enacted*, That the treasurer of said board, before he enters upon the duties of his office, shall enter into bond with sufficient security or securities, to be approved of by the county court or such other tribunal as shall be established by law for the transaction of all county business, conditioned that he shall faithfully discharge the duties of his office, and account for all monies which may come into his hands, which bond shall be recorded in the

Treasurer to give bond & security

To be approved by the cty. court.

Condition.

Bond to be recorded.

recorder's office of said county, and filed in the office of the clerk of the circuit court of said county.

Record of proceedings to be kept.

Transcript, &c. to be laid before the general assembly.

Sec. 12. *Be it further enacted*, That the said board of trustees shall keep a fair record of their proceedings, and, when required, shall lay a transcript of the same, together with a statement of the receipts and expenditures, the funds of the institution, and the appropriations by them made, before the general assembly of said state of Missouri.

Franklin academy established.

Trustees.

Body politic and corporate.

Oath.

Duties. Powers. Vacancies.

Exceptions.

Sec. 13. *Be it further enacted*, That an academy be, and the same is hereby established at the town of Franklin, in the county of Howard, which shall be called and known by the name of Franklin Academy; that Thomas A. Smith, Nathaniel Hutcheson, John J. Lowry, George Tompkins, James C. Ludlow, Taylor Berry, and Jonathan S. Findlay, be, and they are hereby constituted a body politic and corporate, to be known by the name and style of the Trustees of the Franklin Academy, and by that name shall have perpetual succession and a common seal; that the said trustees and their successors shall take the same oath, perform the same duties, possess the same powers, and be entitled to the same privileges, in every respect, and vacancies filled in the same manner as is provided for in the preceding sections of this act, establishing an academy in the town of St. Charles, and which are not inapplicable as to the local situation of the academy in this act hereby established, respecting the act of congress of the thirteenth of June, eighteen hundred and twelve, and without being compelled to teach the French language at said Franklin Academy.

Sec. 14. *Be it further enacted*, That this act shall take effect and be in force from and after the first day of January, one thousand eight hundred and twenty-one.

[*Approved*, *November* 16, 1820.]

LOUISIANA ACADEMY.

12th January 1822.

AN ACT supplementary to an Act establishing an Academy in the town of St. Charles, and an Academy in the town of Franklin, in the state of Missouri.

Academy established in the town of Louisiana.

Trustees appointed.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That an academy be, and the same is hereby established in the town of Louisiana, in the county of Pike, which shall be called and known by the name of Louisiana Academy; that John M'Cune, William P. Holliday, James Watson, Michael J. Noyes, John E. Allen, John Jordan, and Richard Matson, be, and they are hereby constituted a body politic and corporate, to be known by the name and style of the Trustees of the Louisiana Academy, and by that name shall have perpetual succession and a common seal; that the said trustees and their successors shall take the same oath, perform the same duties, possess the same powers, and be entitled to the same privileges, in every respect, and vacancies filled in the same manner as provided for by the act to which this is a supplement: *Provided*, That there shall be no compulsion to teach the French language in said Louisiana academy. This act to be in force from and after its passage.

Their powers & duties.

Proviso.

[*Approved*, 12*th January*, 1822.]

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ST. MARY'S SEMINARY.

28th Nov. 1822.

AN ACT to incorporate St. Mary's Seminary.

Whereas, a petition has been presented to this general assembly, representing that a number of persons, inhabitants of the Barren settlement in the county of Perry, have given a section of land in their neighborhood, for the erection and support of a seminary of learning, and have solicited an act of incorporation: Therefore,

Preamble.

SECTION 1. *Be it enacted by the General Assembly of the state of Missouri*, That Frederick C. Hase, John Layton, Aquilla Hagan, Joseph Manning, and Joseph Rosati, be, and they are hereby confirmed trustees of the seminary now existing in the Barren settlement, in Perry county.

Trustees confirmed.

SEC. 2. *Be it further enacted*, That the aforesaid persons shall be, and they are hereby constituted a body corporate, to be known by the name and style of the trustees of St. Mary's seminary, and by that name shall have perpetual succession and a common seal, and may sue and be sued, plead or be impleaded in any court of law or equity within this state.

Constituted a body corporate.

SEC. 3. *Be it further enacted*, That when a vacancy may happen in said board, by death, resignation, removal or otherwise, the remaining trustees, or a majority of them, shall have full power and authority to nominate and appoint a suitable and proper person or persons to supply such vacancy, and the person or persons so nominated and appointed, shall be vested with the same powers and authority, as if specially named in this act.

Vacancies, how filled.

SEC. 4. *Be it further enacted*, That the said trustees shall have power in their corporate capacity, to receive by donation, any lands, tenements, hereditaments, monies, rents, goods and chattels, and to hold the same by the name aforesaid, to them and their successors in office forever, for the use and benefit of the said seminary; and they are

Powers of trustees.

authorised to take such measures as they may think proper, for the improvement, leasing or renting such lands as may now, or hereafter belong to said institution, and to sell and dispose of such personal property, as may belong thereto, for the benefit thereof, as they may think expedient.

First named trustee to give notice of first meeting.

SEC. 5. *Be it further enacted,* That the person first named herein, or in case of his absence, the next named, shall give notice of the time and place of the first meeting of the said trustees, and on the attendance of a majority thereof, they shall appoint a chairman, and adopt such regulations for their own government, as they may deem expedient.

Times of meeting.

Special meetings,

How called.

Powers of trustees.

To take oath.

SEC. 6. *Be it further enacted,* That there shall be annually two stated meetings of the said board of trustees, to wit: on the first Mondays of May and November, with power to adjourn to any time they may think proper, and the chairman of the board, at the request of any two of the members, shall have power to call a special meeting, by giving five days previous notice of such meeting; and a majority of them at any stated, adjourned or special meeting shall form a quorum, and shall be capable of doing and transacting all the business and concern of the seminary, fixing the terms of tuition, and of enacting any by-laws or ordinances for the government of the same, which may not be repugnant or contrary to the constitution of the United States, or to the constitution or laws of this state, or may in any wise control or interfere with the right of conscience, and shall severally, before entering upon the duties of their office, before some judge or justice of the peace, take an oath or affirmation, well and truly to discharge the duties of their respective offices according to the best of their abilities: *Provided,* The said trustees shall not have power to grant to themselves any compensation for their services.

SEC. 7. *Be it further enacted,* That this act shall take effect and be in force, from and after the first day of January next. [*Approved,* 28*th November,* 1822.]

POTOSI ACADEMY.

24th December, 1824.

AN ACT to incorporate the Potosi Academy in the county of Washington.*

Preamble.

Whereas, several inhabitants of the county of Washington have, by subscription among themselves, built and in part finished two houses at Mine a Breton, in said county, for the purpose of erecting and establishing an academy therein, for the education of youth, by name of Potosi Academy, which academy is now in operation, and trustees named by the subscribers thereto to superintend the same: And whereas, by a law passed at this session of the legislature, the sum of four thousand dollars is authorized to be raised by lottery for the benefit of said academy and paid to the trustees thereof:*

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*This Academy was first incorporated by an act of the general assembly of the territory of Missouri, passed the 30th January, 1817, of which this act is a copy, except as to the qualification of voters, in the 1st section; which in the old law, fixed the amount to be subscribed and paid by a voter, at five dollars.

Election of trustees.

Qualification of voters.

Be it, therefore, enacted by the General Assembly of the state of Missouri, That on the first Saturday in the month of September, annually, an election shall be held at the said academy, for seven trustees of said academy, for the ensuing year, which election shall be by ballot; no person shall be entitled to vote at the said election, except a free white male inhabitant of the age of twenty-one years and upwards, who have subscribed and paid at least the sum of two dollars towards said academy, and have resided within said county one year preceding such election; the election shall be kept open from twelve o'clock in the forenoon, until four o'clock in the afternoon; each ticket shall contain the name of seven persons for trustees, who have resided in the said county one year previous to the election, and who have also subscribed and paid the sum of five dollars at least, to the said academy previously thereto. After the election is closed, the tickets shall be examined and counted, and the seven persons having the highest number of votes shall be trustees for the said academy for one year thereafter; and in case no election shall be held on the day herein appointed for that purpose, until succeeding trustees shall be appointed according to the foregoing provisions of this act, the first election shall be on the first Saturday of September next, and until such election shall take place, William H. Ashley, Lionel Browne, John R. Jones, Moses Austin, David Wheeler, Moses Bates, Benjamin Elliott, James Austin, William Perry, John McIlvain, Andrew Scott, John Hawkins, and Abraham Brinker, are hereby named and appointed trustees thereof, and they, and their successors in office, shall be, and they are hereby constituted a body politic and corporate, to be known by the name of the trustees of the Potosi Academy, and by that name shall have perpetual succession in office and a common seal.

First trustees appointed.

Meetings of the board.

SEC. 2. *And be it further enacted*, That there shall be a monthly meeting of the trustees of the said academy, on the first Saturday of every month; and the president, or any two of the said board, shall have power to call a special meeting, giving at least two days previous notice thereof, in writing, in one or more of the most public places in the town of Potosi; any five of said trustees, at any stated, adjourned, or special meeting, shall form a board or quorum, and a majority of them shall be capable of acting and doing all the business and concerns of the academy, and particularly of entering into contracts for erecting or repairing any building or buildings necessary for the said institution; of making and enacting any by-laws and ordinances for the government of said academy, not contrary to the constitution or laws of the United States, or the laws of this state; of filling vacancies in the board of trustees, occasioned by the death, resignation, or removal out of the state, until the next annual election; of electing and appointing the principal professors and teachers of the said academy; of agreeing with them for their salaries and stipends, and removing them for misconduct or breach of the laws of the institution; of appointing a committee of their own body to carry into execution all and every the resolutions of the board; of appointing a president, treasurer, and secretary, and stewards, managers, and other necessary and customary officers for taking care of the estate and managing the institution, and to pay them for their services: *Provided*, That all vacancies in the board of trustees shall be filled at a standing meeting of the board.

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*This preamble refers to an act passed 22d January, 1817, entitled an act to authorize a lottery for the benefit of the Potosi academy.

Quorum.

By-laws, &c

Choice of professors, &c.

Appointment of officers.

SEC. 3. *Be it further enacted*, That the said trustees shall have power to demand, sue for, and receive and recover the money, materials, and labor, already, or that may hereafter be subscribed for the use of said academy, now called the Potosi Academy, but hereafter called the Mine a Breton Academy, and expend the same for the purposes of said academy, in such a manner as they shall deem proper.

Trustees may demand and receive materials, &c subscribed.

SEC. 4. The said academy shall be divided into branches, with the necessary teachers and masters in each, to be denominated the Senior and Junior branches; in the Senior branch, the said trustees shall at all times cause the English language to be taught in the said academy, together with such other languages and sciences as are usually taught in seminaries of learning, so far as the funds of the institution and circumstances will admit; in the Junior branch, the said trustees shall at all times cause the first principles of literature, with reading, writing, and arithmetic, as far as the "Rule of Three" at least, to be taught in the said academy.

Regulations of academy.

SEC. 5. *Be it further enacted*, That no preference shall

No prefer-be given, or any discrimination be made in the choice of trustees, professors, teachers or students, on account of religious sentiments, nor shall any trustees, professors, or teachers, at any time, make by-laws, ordinances, or regulations, that may in any wise interfere with, or in any manner control the rights of conscience, or the free exercise of religious worship.

On account of religious opinions.

Rights of conscience guaranteed.

SEC. 6. *Be it further enacted*, That the said trustees, and their successors, shall, by the name and style aforesaid, be capable in law to purchase, receive, and hold, to them and their successors, any lands, tenements, goods and chattels, of what kind soever they may be, which shall be given or devised to, or purchased by them, for the use of said academy, and shall sell and dispose of the same in such manner as shall seem most conducive to the interest of the said academy.

Corporation may acquire and hold property real and personal.

SEC. 7. This act shall be in force from and after the passage thereof.

[*Approved, December 18th*, 1824.]

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STE. GENEVIEVE ACADEMY.

AN ACT to incorporate the Trustees of the Ste. Genevieve Academy.*

24th December, 1824.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That James Maxwell, Jean Baptiste Valle, Jacques Guibord, St. James Beauvais, François Janis, Jean Baptiste Pratte, Joseph Pratte, Walter Fenwick, Andrew Henry, Timothy Phelps, Aaron Elliot, Nathaniel Pope, Joseph Spencer, Jun., John Scott, William James, Thomas Oliver, Joshua Penneman, William Shannon, George Bullett, Henry Dodge, and Harry Diel, shall be, and they are hereby constituted a body politic and corporate, to be known by the name of the Trustees of the Ste. Genevieve Academy, in the county of Ste. Genevieve,—and by that name shall have perpetual succession and a common seal.

Trustees incorporated.

Style of Corporation.

SEC. 2. *Be it further enacted*, That there shall be annually two stated meetings of the said board of trustees, at the town of Ste. Genevieve, to wit: on the first Mondays in July and December. The chairman of the board, with the advice or at the request of any three of the trustees, shall have power to call a special meeting, giving ten days

Meetings, stated and special.

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*This academy was first established by an act passed by the Governor and Judges, on the 21st June, 1808, from which this act is copied, except the 5th sec.; the corresponding section of the old law making it imperative on the trustees to cause the French language to be taught.

What number constitute a quorum.

Powers to enact by-laws

Supplying vacancies.

To elect professor and teachers, &c.

Appointing officers.

previous notice thereof. Any nine of the said trustees, at any stated, adjourned or special meeting, shall form a board or quorum; and a majority of them shall be capable of doing and transacting all the business and concerns of the academy, and particularly for entering into contracts for erecting or repairing any building or buildings necessary for the said institution—of making and enacting by-laws and ordinances for the government of the said academy, not contrary to the constitution or laws of the United States, or the laws of this state—of filling vacancies in the board of trustees, occasioned by death, resignation, or removal out of the state—of electing and appointing the principal professor and teachers of the said academy, of agreeing with them for their salaries and stipends, and of removing them for misconduct or breach of the laws of the institution—of appointing committees of their own body to carry into execution all and every the resolutions of the board—of appointing a chairman, treasurer and secretary out of their own numbers, and stewards, managers, and other necessary and customary officers, for the taking care of the estate and managing the concerns of the institution: *Provided*, That all vacancies in the board of trustees shall be filled at a stated meeting of the board.

Board may demand and receive materials, &c. subscribed.

Sec. 3. *Be it further enacted*, That the board of trustees shall have power to demand and receive the money, materials and labor already subscribed, or that may hereafter be subscribed, for the use of the said institution, and expend the same for the purposes of said academy in such manner as they shall deem proper.

Institution for the education of Females, when to be established.

Sec. 4. *Be it further enacted*, That it shall be the duty of the trustees, as soon as the funds of the academy will admit of it, to establish an institution for the education of females, and to make such by-laws and ordinances for the government thereof as they may think proper and necessary.

Languages to be taught.

Sec. 5. *Be it further enacted*, That the trustees shall be enjoined to cause, at all times, the English language to be taught in the said academy, together with such other languages and sciences as the funds of the institution and circumstances will admit.

Children of the poor, and of Indians, to be taught gratis

Sec. 6. *Be it further enacted*, That the trustees shall be enjoined to cause the children of poor people, and the children of Indians residing in this state and found qualified, to be instructed gratis, and to cause all the students to be educated gratis at the said academy in all or any of the branches of education which they may require, whenever the funds of the institution shall, in the opinion of the trustees, permit these or either of these arrangements.

No preference on account of religious opinions.

Rights of conscience guaranteed.

SEC. 7. *Be it further enacted*, That, as the extension of useful knowledge ought to be the only object contemplated by this institution, no preference shall be given, or any discrimination made, in the choice of trustees, professors, teachers or students, on account of religious sentiments; nor shall the trustees, professors, or teachers, at any time, make by-laws, ordinances, or regulations, that may in any wise interfere with, or in any manner control the rights of conscience, or the free exercise of religious worship.

Corporation may hold property real and personal.

SEC. 8. *Be it further enacted*, That the said trustees and their successors, by the name and style aforesaid, shall be capable in law to purchase, receive and hold, to them and their successors, any lands, tenements, goods and chattels, of what kind soever the same may be, which shall be given, or devised to, or purchased by them, for the use of the said academy, and shall sell and dispose of the same in such manner as shall seem most conducive to the interest of the said academy.

SEC. 9. *Be it further enacted*, That this act shall be in force from the date of the passage thereof, and shall continue in force until repealed or amended by the legislature.

[*Approved, December* 24*th*, 1824.]

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BOONEVILLE ACADEMY.

14 January, 1825

AN ACT to establish an Academy in the town of Booneville.

Booneville Academy established.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That an academy be, and the same is hereby, established in the town of Boonville, state of Missouri, which shall be called and known by the name of the Booneville Academy.

First trustees appointed.

Style of Corporation.

SEC. 2. *Be it further enacted*, That Robert P. Clark, Jacob Wyan, Peyton R. Hayden, James S. Collins, Justinian Williams, Green Seat, Frederick Houx, William Savage, and Jacob M'Farland, be, and they are hereby constituted a body politic and corporate, to be known by the name of the Trustees of the Booneville Academy, and by that name shall have perpetual succession and a common seal.

Vacancies in the office of trustees how supplied.

SEC. 3. *Be it further enacted*, That when a vacancy may happen in said board or their successors, by death, resignation, removal, or otherwise, the tribunal for the transaction of county business shall nominate and appoint a fit and proper person or persons to supply such vacancy or vacancies; and the person or persons so nominated and appointed, from time to time, shall be invested with the same powers and authority as if specially named in the provisions of this act; and by the name and style of the Trustees of the Booneville Academy, they may sue or be sued, implead or be impleaded, in any court of law or equity in the said state of Missouri.

Corporation may hold property real and personal.

Sec. 4. *Be it further enacted*, That the said trustees and their successors shall have full power, in their corporate capacity, to hold by gift, grant, demise, devise, or otherwise, any lands, tenements, hereditaments, monies, rents, goods or chattels, of what kind soever the same may be, which is given, granted, devised, demised to, or purchased by them, for and to the use of the aforesaid academy; and may sell and dispose of any personal property, in such manner as they, or a majority of them, shall think most conducive to the interest and prosperity of said academy.

System of education.

Poor to be taught gratis, when.

Sec. 5. *Be it further enacted*, That it shall be the duty of the trustees of said academy, to cause to be taught in the academy aforesaid, such sciences as the funds of the said institution will permit; and as soon as the funds may, in the opinion of the board justify it, they shall cause to be received and educated in the said academy, orphans, and the children of such persons as may be unable to defray the expense of their education, who shall be taught the rudiments of an English education, and the higher branches of literature if the said trustees shall think them susceptible of the same, without fee or reward.

No preference on account of religious opinions.

Rights of conscience guaranteed.

Sec. 6. *Be it further enacted*, That in the choice of trustees, professors, teachers and students, no preference shall ever be given, nor discrimination made, on account of religious opinions; nor shall the trustees, professors or teachers, at any time, make or enact by-laws, or ordinances, or regulations, that will or may in any wise control or interfere with the rights of conscience or the free exercise of religious worship.

Special meetings, how called, and powers.

Sec. 7. *Be it further enacted*, That the chairman of the board of trustees, at any time, at the request of any two of the members, shall have power to call a meeting, by giving five days previous notice of such meeting; a majority of said trustees at any stated, adjourned or special meeting, shall form a board or quorum, and shall be capable of doing and transacting all the business and concern of the academy, and particularly of entering into any contract or contracts for erecting or repairing any building or buildings for the use of said institution—of making and enacting any by-laws or ordinances for the government of the same, not contrary to the provisions of this act, nor repugnant to the laws and constitution of the state of Missouri, nor the laws and constitution of the United States; they shall have power to elect and appoint the principal professor and teachers of said academy, of agreeing with them for their salaries and stipends, of removing all or any of them for a breach of the laws and ordinances of said institution, or any moral delinquency, or other causes—of appointing committees of their own body to carry into execution the resolutions and ordinances of the board—of appointing a chairman, treasurer and secretary out of their own number, and stewards, messengers, and all other necessary and customary officers for taking care of the estate and managing the concerns of the institution.

Officers to take oath.

SEC. 8. *Be it further enacted*, That the chairman, treasurer, secretary, and other members of the board, shall, severally, before they enter upon the duties of their appointment, take an oath or affirmation, before some judge or justice of the peace duly qualified to administer the same, well and truly to exercise and discharge the duties of their respective appointments according to their best abilities.

First meeting how called.

SEC. 9. *Be it further enacted*, That the person first named in this act as one of the board of trustees, or in case of his absence, neglect or refusal to act, the next named person is authorized and empowered to call the first meeting of the board, at such time and place as he may think proper; and when convened, the said trustees shall appoint a chairman, and adopt such regulations for their own proceedings and government as they may deem necessary.

Treasurer to give bond.

SEC. 10. *Be it further enacted*, That the Treasurer of said board, before he enters upon the duties of his office, shall enter into bond with sufficient security or securities, to be approved of by the tribunal transacting county business, conditioned that he shall faithfully discharge the duties of his office, and account for all monies which may come into his hands; which bond shall be recorded in the recorder's office of said county, and filed in the office the clerk of the circuit court of said county.

Trustees to keep records, and accounts of receipts and expenditures.

SEC. 11. *Be it further enacted*, That the said board of trustees shall keep a fair record of their proceedings; and, when required, shall lay a transcript of the same, together with a statement of receipts and expenditures, the funds of the institution, and the appropriations by them made, before the general assembly of said state of Missouri.

SEC. 12. *Be it further enacted*, That this act shall take effect and be in force from and after the passage thereof.

[*Approved*, *January* 14*th*, 1825.]

FAYETTE ACADEMY.

12th Feb. 1825.

AN ACT establishing an Academy in the town of Fayette, in the county of Howard.

Fayette academy established.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That an academy be, and the same is hereby established in the town of Fayette, and county aforesaid, which shall be called and known by the name of the Fayette Academy.

First trustees

Style of corporation.

SEC. 2. *Be it further enacted*, That Gray Bynum, William B. M'Lean, William Taylor, Joseph Sears, Jesse W. Garner, Ignatius P. Owens, and John Jackson, be, and they are, constituted a body politic and corporate, to be known by the name of the Trustees of the Fayette Academy, and by that name shall have perpetual succession and a common seal.

Vacancy in the board of trustees, how supplied.

SEC. 3. *Be it further enacted*, That when a vacancy may happen in said board or their successors, by death, resignation, removal, or otherwise, the county tribunal, or such other county court as shall be established by law for the transaction of county business, shall nominate and appoint a fit and proper person or persons to supply such vacancy or vacancies; and the person or persons so nominated, from time to time, shall be invested with the same powers and authority as is specially named in the provisions of this act; and by the name and style of the Trustees of the Fayette Academy, they may sue and be sued, implead and be impleaded, in any court of law or equity in the state of Missouri.

Corporate powers.

SEC. 4. *Be it further enacted*, That the said trustees and their successors shall have full power, in their corporate capacity, to hold by gift, grant, demise, devise, or otherwise, any lands, tenements, hereditaments, monies, rents, goods and chattels, of whatever kind the same may be, which is given, granted, devised, demised to, or purchased by them, for and to the use of the aforesaid academy; and may sell and dispose of any personal property in such manner as they, or a majority of them, shall think most conducive to the interest and prosperity of said Academy.

System of education.

Poor children to be educated gratis, when.

SEC. 5. *Be it further enacted*, That it shall be the duty of the trustees of the academy aforesaid to cause, at all times, the English language to be taught in said academy, together with the French language, and such other languages and sciences as the funds of the said institution will permit; and as soon as the funds may, in the opinion of the board, justify, they shall cause to be received and educated in the said academy, orphans, and the children of such other persons as may be unable to defray the expenses of their education, who shall be taught the rudiments of an English education and the higher branches of literature if the said trustees shall think them susceptible of the same, without fee or reward.

No preference on account of religious opinions.

Sec. 6. *Be it further enacted*, That in the choice of trustees, professors, teachers and students, no preference shall ever be given, nor discrimination made, on account of religious opinions; nor shall the trustees, professors or teachers, at any time, make or enact by-laws, or ordinances, or regulations, that will or may in any wise control or interfere with the rights or free exercise of religious worship.

Meetings of the board of trustees.

Sec. 7. *Be it further enacted*, That there shall be stated meetings of said board of trustees, to wit: on the first Mondays in January and July. The chairman of the board, at the request of any two of the members, shall have power to call a special meeting, by giving ten days previous notice of said meeting; a majority of said trustees, at any stated, adjourned or special meeting shall form a board or quorum, and shall be capable of doing and transacting all the business and concern of the academy, and particularly of entering into any contract or contracts for erecting or repairing any building or buildings for the use of said institution—of making or enacting any by-laws or ordinances for the government of the same, not contrary to the provisions of this act, nor repugnant to the laws and constitution of the state of Missouri, or the laws and constitution of the United States; they shall have power to elect and appoint the principal professors and teachers of said academy, of agreeing with them for their salaries, &c., of removing any or all of them for a breach of the laws and ordinances of said institution, or any moral delinquency, or other causes—of appointing committees of their own body to carry into execution the resolutions and ordinances of the board—of appointing a chairman, treasurer and secretary of their own body, and stewards, managers, and all other necessary and customary officers, for taking care of the estate and managing the concerns of the institution.

Powers and duties.

Officers to take oath.

Sec. 8. *Be it further enacted*, That the chairman, treasurer, secretary, and other members of the board, shall severally, before they enter upon the duties of their appointment, take an oath or affirmation, before any judge or justice of the peace, that they will support the constitution of the United States and of this state, and well and truly exercise and discharge the duties of their respective appointments according to the best of their abilities.

First meeting of trustees.

Sec. 9. *Be it further enacted*, That the person first named in this act as one of the board of trustees, or in case of his absence, neglect or refusal to act, the next named person is authorized and empowered to call the first meeting of the board, at such time and place as he may think proper; and when convened, the said trustees shall appoint a chairman, and adopt such regulations for their own proceedings as they may deem necessary.

Treasurer to give bond.

Sec. 10. *Be it further enacted*, That the treasurer of said board, before he enters upon the duties of his office, shall enter into bond with sufficient security or securities, to be approved of by the county court or such other tribunal as shall be established by law for the transaction of county business, conditioned that he shall faithfully discharge the duties of his office, and account for all monies which may come into his hands; which bond shall be recorded in the recorder's office of said county, and filed in the office of the circuit court of said county.

Trustees to keep records, and accounts of receipts and expenditures.

Sec. 11. *Be it further enacted*, That the said board of trustees shall keep a fair record of their proceedings; and, when required, shall lay a transcript of the same, together with a statement of the receipts and expenditures, the funds of the institution, and the appropriations by them made, before the general assembly of said state of Missouri.

Sec. 12. *Be it further enacted*, That this act shall take effect and be in force from and after the passage thereof.

[*Approved*, *February* 12*th*, 1825.]

ACCOUNT.

22d January, 1825.

AN ACT to regulate the action of account.

By & against whom the action of account may be maintained.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That when one or more joint tenants, tenants in common or co-parceners, in real estate, or any interest therein, shall take, use, or have, the benefit thereof, in greater proportion than his or their interest therein, such person or persons, or his or their executors and administrators, shall be liable to render his or their reasonable account of the use and profit of such estate, or interest, to his and their co-tenant, jointly and severally; and actions of account may be brought and maintained by one joint tenant, tenant in common or co-parcener, his or her executors or administrators, against such, or any such co-tenants receiving more than comes to his or her just share or proportion, as bailiff, or bailiffs, and against his or her executors or administrators.

Residuary legatee, being executor

Sec. 2. *Be it further enacted*, That any executor, being a residuary legatee, may bring and maintain an action of account against his co-executor or executors of the estate of the testator, in his or their hands, and any other residuary legatee shall have the like remedy against executors and administrators.

executor or not may have the action.

SEC. 3. *Be it further enacted*, That executors and administrators may have and maintain actions of account, in the same manner as their testator or intestate might have had and maintained, if he or she had lived, and such actions may be brought and maintained against the executors or administrators, of every guardian, bailiff, or receiver.

Account may be maintained by and against executors and administrators.

SEC. 4. *Be it further enacted*, That where any person is, or shall be, liable to account as guardian, bailiff, or receiver, or otherwise, to another, and will not give account willingly, and the party to whom such an account ought to be made, shall sue out a writ of account, and the person against whom such writ shall be issued, being summoned, do not appear at the return of the writ, then the defendant shall be attached by his or her body, to come and make his or her account.

Action how to be commenced

Attachment in case of default.

SEC. 5. *Be it further enacted*, That whenever a judgment shall be rendered against any defendant, in an action of account that he do account, the court shall appoint, not more than five, nor less than three, able, disinterested and judicious men, as auditors, to take the account, who shall be sworn faithfully and impartially to take and state the account between the parties and make report to the court; and the auditors, or a majority of them, shall have power to appoint the time and place for the hearing, and shall give reasonable notice to the parties, and if the defendant shall neglect or refuse to attend at the time and place appointed and render his account, or appearing shall not render his account, the auditors shall receive a statement of the account from the plaintiff, and award to him the whole sum he claims to be due.

After judgment that defendant do account, auditors to be appointed.

SEC. 6. *Be it further enacted*, That if the parties appear and produce their books and accounts, before the said auditors, such auditors or a majority of them [shall] proceed to take and state the accounts, and may take the testimony of witnesses, and examine either or both of the parties, on oath, respecting their accounts, and may administer all necessary oaths to witnesses and parties; and the auditors shall liquidate and adjust the accounts, and state the balance, and to whom due; and they, or a majority of those present, shall report to the court by whom they were appointed, at the next term thereof, and if such report shall be approved by the court, the court shall render judgment for the amount ascertained to be due, with costs; and the party in whose favor the report is made, shall pay the auditors their fees, which shall be taxed as costs; and if

Powers and duties of auditors.

either party shall refuse to be sworn or answer proper questions respecting his account, the auditors may commit him to jail, there to remain until he consent to be sworn, or answer the interrogatories.

Appeal and writ of error.

SEC. 7. *Be it further enacted,* That either party may appeal or prosecute a writ of error from the final judgment upon the report of the auditors: *Provided,* That the party appealing shall be required to enter into recognizance, with security as in other cases; and no writ of error shall be a supersedeas, unless security be given, and it be so ordered, as provided by law in other cases.

[*Approved, January* 22, 1825.]

ADDRESS.

18th January 1824

AN ACT to regulate proceedings against officers removeable by address. (*a*)

(*a*) See state constitution, Art v sec. 16

Proceedings of General Assembly in preferring charges.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That where either house of the general assembly shall be satisfied that there is a probable cause for proceeding against any judge, or other officer, for any matter for which he may be removed from office, by address of two thirds of each house to the governor, they shall cause formal charges and specifications to be made and transmitted to the other house, together with the information upon which they are founded; and such house shall proceed thereon as in case of joint resolutions, and may make such amendments, and prefer such additional charges and specifications, as to them shall seem proper; and when both houses shall concur in exhibiting any charge or charges, they shall be entered upon the journals of each house, and the two houses shall thereupon, by concurrent resolution, fix a day for the trial: and the president of the senate shall immediately cause a notice of the time and place of trial, with a copy of the charges thereto annexed, directed to the accused, and signed by himself, and attested by the secretary of the senate, to be issued; which shall be delivered to the party charged, ten days at least before the day appointed for trial, by the serjeant at arms of either house, or such special messenger as shall be appointed by the senate for that purpose, whose return shall be verified by oath or affirmation; but if the party charged cannot be found, then and in that case, the notice shall be served by leaving a copy of said notice, and charges thereto annexed, at his dwelling house or usual place of abode.

Copy of charges and notice of trial to be served on the accused.

Managers to be appointed

SEC. 2. *Be it further enacted,* That whenever charges shall be exhibited as aforesaid, there shall be appointed, by the joint vote of both houses, two or more competent persons as managers, to prosecute such charges; and the presiding officer of each house shall cause subpœnas to be issued for any witness, whose attendance shall be required by either of the managers, the accused, or his counsel; and commissions to take depositions in all cases where the witness is unable to attend, from sickness or other bodily infirmity, or where the witness is out of the limits of this state; which depositions shall be taken in like manner, and the like notice given thereof, as in the taking depositions to be read in the circuit courts.

Process for witnesses, &c

Depositions.

Sec. 3. *Be it further enacted*, That the party charged as aforesaid, shall respond in writing to the charges exhibited against him, one day at least before the day of trial, and the managers, if they deem it necessary, shall reply thereto without delay; but if the party accused shall be served with notice, and a copy of the charges as aforesaid, and do not respond as aforesaid, proceedings shall be had against him ex-parte, unless further time be given him to respond.

Accused to respond in writing

Replication.

Accused failing to respond.

Sec. 4. *Be it further enacted*, That when notice shall be duly served as aforesaid, the two houses shall assemble in joint meeting, in the hall of the house of representatives, and proceed to trial, in the manner herein after directed: *Provided*, That for good cause shewn, before or on the day appointed for trial, a different day may be appointed by concurrent resolution, and so on as often as may be necessary.

Two houses to assemble at the trial.

Postponement, when.

Sec. 5. *Be it further enacted*, That when the two houses shall be assembled for the trial of the accused as aforesaid, convenient seats shall be provided and set apart for the accused, and his counsel, and the two houses shall hear the testimony, if any be produced, for and against the accused, and the arguments of counsel and managers in joint meeting; and if any question upon the competency of any witness, the admissibility of testimony of any kind, or otherwise, arise during the trial, the same shall be determined by concurrent vote of the two houses, in which case the vote of the house of representatives shall be first taken, after which the vote of the senate, and in all cases where there shall be a difference of opinion between the two houses, on any point, the decision shall be deemed in favor of the accused; and in case either house be equally divided, the presiding officer of the house so equally divided, shall give the casting vote.

Proceedings on the trial regulated.

Questions arising during the trial, how determined.

Sec. 6. *Be it further enacted*, That after the two houses shall, in joint meeting, have heard all the testimony adduced for and against the accused, and the arguments on both sides, the two houses shall separate, and each house

Each house to determine on the charges separately.

shall proceed to determine, separately, whether the accused be guilty or not guilty, of the several charges and specifications exhibited against him, and shall vote upon each charge, separately, and viva voce, and no amendment or alteration shall be made in any charge or specification: *Provided*, That at any time during the trial, the managers may, by permission of both houses, withdraw any charge or specification.

Charges may be withdrawn.

If respondent be found guilty, address to be voted.

SEC. 7. *Be it further enacted*, That if two thirds of each house shall concur in finding the accused guilty of any of the said charges or specifications, either house may originate an address to the governor, setting forth the charges and specifications of which the accused was found guilty, and praying his removal; which address may be amended by the other house, as in case of joint resolutions, and if two thirds of each house shall concur in passing such address, it shall be immediately transmitted to the governor.

Governor to communicate his decision.

SEC. 8. *Be it further enacted*, That it shall be the duty of the governor, within ten days after receiving any address as aforesaid, to communicate his decision, and proceedings thereon, to both houses of the general assembly, if the session so long continue, and if not, then before the end of the session; and when he shall remove any person from office, in pursuance of any such address, he shall cause an entry thereof to be made in the office of the secretary of state; from and after which, the commission, appointment, and authority, of the person so to be removed, shall be vacated, annulled, and revoked.

Entry to be made on removing any officer by address.

[*Approved, December* 18, 1824.]

ADMINISTRATION.

4th July, 1825

AN ACT concerning Executors and Administrators.

Letters testamentary and of administration, by whom granted.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That it shall be the duty of the court of probate in the several counties in this state, and of the judges thereof in vacation, subject to the confirmation or rejection of the court, to grant letters testamentary, or of administration, with or without any will annexed.

Where to be granted.

SEC. 2. *Be it further enacted*, That letters testamentary, and of administration, shall be granted in the county in which the mansion house or known place of abode of the testator or intestate is situate; or if he had no such mansion house or place of abode at the time of his death, and lands be devised in the will, or the testator or intestate be possessed of lands, such letters shall be granted in the county in which the lands or some of them lie (if they lie in different counties;) or if the deceased had no such mansion house or place of abode, and no lands are devised by the will, or the testator or intestate was not possessed of any lands, such letters may be granted in the county in which the testator or intestate died, or where the greater part of his estate may be; and if he died out of the state, having no mansion house, place of abode or lands within this state, such letters may be granted in any county.

Who shall not be executor or administrator.

SEC. 3. *Be it further enacted*, That no person shall act as executor or administrator, unless he be twenty-one years of age and upwards, and of sound mind; nor shall any married woman act as executrix or administratrix; nor shall the executor of an executor in consequence thereof be executor to the first testator.

Who entitled to administration. Next of kin. Creditors. Other persons.

SEC. 4. *Be it further enacted*, That letters of administration shall be granted to the representatives of the intestate, who may apply for the same, and are duly qualified, preferring first the husband or wife, or such others as are entitled by law to share in the distribution of the intestate's estate, or one or more of them, as the court, or judge in vacation, shall be of opinion will best manage and improve the estate; and if no such person applies for such letters within sixty days after the death of the intestate, letters of administration may be granted to any creditor of the intestate, who shall apply for the same within ninety days next after the death of such intestate; and if no such application is made within that time, then to any person whom the court, or judge in vacation, shall think will best manage and improve the estate. And it shall moreover be lawful for such court or judge, on the application of any person interested, to issue a citation to any person entitled to administration as aforesaid, calling on them to take letters of administration; and if such person shall neglect to appear and take out such letters within thirty days after the service of such citation, such neglect shall be considered as a renunciation of such person to the administration; and in such case, and in all others where the person entitled to administration shall file his or her renunciation thereof, in writing, with the judge of the probate court of the proper county, letters of administration shall be granted to the person next entitled thereto.

Persons entitled to administration, may be required to appear by citation. Failure deemed a renunciation.

SEC. 5. *Be it further enacted*, That the power of executors over the testator's estate, before probate of the will, shall be in no wise restrained, but shall remain as heretofore; and letters testamentary upon wills and testaments, whereof probate hath been duly made according to law, shall be granted to the person therein appointed executor or executrix; but if any person so named as executor or

Power of executors before probate. Letters testamentary, to whom granted.

In case of refusal, disqualification, &c.

Letters of administration with the will annexed.

executrix shall refuse to take on him or herself such executorship, or be disqualified, such letters shall be granted to the other persons so named, not renouncing as aforesaid, and not disqualified; but if all the persons appointed to execute such will shall renounce the executorship as aforesaid, or be disqualified, letters of administration shall be granted to the person to whom administration would have been granted if there had been no will.

Letters, during minority or absence of ex'r. or *pendite lite.*

Persons may be appointed to collect & preserve the estate.

SEC. 6. *Be it further enacted*, That if there be any contest about the validity of any will, or the executor be a minor or absent from the state, the letters of administration during such contest, minority or absence of the executor, may be granted, bond and security being taken as in other cases, with such variations in the condition as the case may require, or some proper person or persons shall be appointed by the proper court of probate, or judge in vacation, to collect and preserve the estate, and make an inventory thereof; and such person or persons shall enter into bond, with sufficient security, for the collecting such estate, and making an inventory thereof, and the safe keeping and delivering up the same when thereto required by the executor or administrator.

Applicants for administration to discover on oath, the heirs, if any

Adm'rs. to take oath.

SEC. 7. *Be it further enacted*, That every person applying for letters of administration shall, before the same are granted, state upon oath or affirmation, to the best of his or her knowledge, if there are any heirs or legal representatives of the intestate living, and, if any, state their names and place of residence,—which statement shall be in writing, signed by the person making the same; and the person to whom administration is granted shall also take, before the court or judge, an oath or affirmation that the deceased died without a will, as far as he knows and believes; and that he will well and truly administer all and singular the goods and chattels, lands and tenements, rights and credits, of the deceased, and pay his debts as far as the assets which may come to his hands will extend, and the law direct, and that he will make a true and perfect inventory of all the goods and chattels, rights and credits, of the deceased, and account for and pay over, according to law, all assets which shall come to his hands, possession or knowledge.

Oath of executors and adm'rs. with will annexed

SEC. 8. *Be it further enacted*, That every executor or administrator with the will annexed, before letters testamentary or of administration are granted, shall make oath that he will make a true and perfect inventory of all and singular the goods and chattels, lands and tenements, rights and credits, of the testator, according to law,—and will well and truly perform the last will and testament of the testator, by paying first his debts, and then the legacies contained in said will, as far as the assets of the testator will extend, or the law charge them,—and that he will from time to time render true and just accounts of his executorship or administration, and will faithfully perform all and singular such matters and things, touching such executorship or administration, as are or shall be required of him by law.

Bond to be given by administrator.

Sec. 9. *Be it further enacted*, That the court or judge granting letters of administration on the estate of any person dying intestate, shall take of the person to whom they are granted, a bond, with two or more sufficient securities resident in the county, to the state of Missouri, in such amount as the court or judge shall deem sufficient, respect being had to the value of the estate,—which bond shall be conditioned as follows, to wit: "The condition of the above obligation is such, that if the above bounden A. B. administrator, or administratrix, of all and singular the goods and chattels, rights and credits, which were of C. D. deceased, do make or cause to be made a true and perfect inventory of all and singular the goods, chattels, lands, tenements, rights and credits, of the said deceased, which have come to the hands, possession or knowledge of him the said A. B. or into the hands or possession of any persons for him, and the same so made do return and exhibit in the office of the clerk of the probate court for the county of ———, within such times and in such manner as is or may be prescribed by law; and all and singular the monies, goods and chattels, lands and tenements, rights and credits of the deceased, accruing from or arising out of his estate, which shall come to the hands, possession or knowledge of the said A. B. shall well and truly administer according to law, and pay the debts of the deceased as far as his assets will extend, and the law direct; and, further, make or cause to be made just and true accounts of his said administration, and make due and proper settlements thereof from time to time, according to law, or the order, sentence or decree of any court having competent jurisdiction; and shall, moreover, well and truly do and perform all other matters and things, touching the said administration, as are or shall be provided by law, or enjoined on him by the order, sentence or decree of any court having competent jurisdiction; then this obligation to be void and of no effect, otherwise to remain in full force and effect."

Form of condition.

Bond to be given by executors and adm'rs with will annexed

Sec. 10. *Be it further enacted*, That all executors or administrators with the will annexed, or of goods remaining unadministered, shall enter into bond, with sufficient securities as required in the preceding section, changing only such part of the form of the condition as the different circumstances may require.

Bonds of executors and adm'rs to be recorded.

Copies, evidence

SEC. 11. *Be it further enacted*, That the judges of the several probate courts shall record, in a well bound book to be kept for that purpose, all bonds given by executors and administrators, in their respective counties, and preserve the original in regular files; and a copy of such bond, or the record thereof, so kept, certified by the judge, with the seal of the court annexed, shall be sufficient evidence in any action brought on such bond.

Letters testamentary and of administration to be recorded.

Letters not recorded, not received in evidence.

Copies of recorded letters, evidence

Penalty for delivering letters not recorded.

SEC. 12. *Be it further enacted*, That all letters testamentary or of administration shall, before the same are delivered to the executor or administrator, be recorded by the judge of the court of probate of the county in which they are granted, in a well bound book to be kept for that purpose, and the judge shall certify on such letters that the same have been recorded according to law; and if such letters are not recorded as aforesaid, they shall not be received in evidence in any court in this state; and copies of letters, or of the record of letters, recorded as aforesaid, certified by the judge under the seal of the court in which they are recorded, shall have the same effect as the original; and if any judge shall deliver any letters testamentary or of administration without recording the same, he shall forfeit and pay double the damages which may be occasioned by reason of such default.

Letters of administration revoked on production of will.

SEC. 13. *Be it further enacted*, That if, at any time after the letters of administration have been granted, a will of the deceased shall be produced, and probate thereof granted according to law, such letters of administration shall be revoked and repealed, and letters testamentary or of administration with the will annexed granted, in the same manner as if the former letters had not been obtained.

Letters testamentary, revoked if the will be set aside, &c.

Administration de bonis non.

SEC. 14. *Be it further enacted*, That in all cases where a will is proved, and letters thereon granted, and such will shall be afterwards set aside, or disproved according to law, the letters granted thereon shall be revoked and repealed, and administration granted of the goods unadministered.

Marriage of femme sole, executrix or adm'x a revocation of her letters.

SEC. 15. *Be it further enacted*, That where any femme sole, executrix or administratrix shall marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereof devolve upon him; but the marriage shall operate as an extinguishment of her powers, and her letters shall be revoked and repealed.

Revocation for insanity,

SEC. 16. *Be it further enacted*, That if any executor or executrix, administrator or administratrix, shall become insane, lunatic, or of unsound mind, or shall be convicted of any infamous crime, or shall fail in the discharge of his or her duties, or otherwise become incapable or evidently unsuitable to discharge the trust reposed in him or her, or shall waste or mismanage the estate, or so conduct himself or herself therein as to endanger any co-executor or co-administrator, co-executrix or co-administratrix, the court of probate out of which the letters issued, upon complaint in writing thereof made by any co-executor or administrator, co-executrix or administratrix, or other person interested, supported by oath or affirmation, and due notice thereof given to the person complained of, shall hear and determine the complaint; and if they find it just, shall revoke and repeal his or her letters. *and other disabilities.*

SEC. 17. *Be it further enacted*, That when any legatee, creditor, or other person interested in any estate, or any security of any executor or executrix, administrator or administratrix, shall allege, on oath or affirmation, that he or she hath sufficient cause to believe, and does believe, that any security of any executor or administrator, executrix or administratrix, is likely to become insolvent; or when any security shall allege as aforesaid that his principal is likely to become insolvent, or is wasting the estate of the deceased; or if it shall appear, at any time, to the satisfaction of the court of probate from which the letters testamentary or of administration issued, that any security as aforesaid has removed from this state, or has departed this life, or that the penalty of any bond given by any executor or administrator, executrix or administratrix, is insufficient to secure the due administration of the estate, or that such bond has not been taken according to law,—such court shall, due notice being previously given to the principal in such bond, examine into the cause of complaint, and if they find it just, shall order such executor or administrator, executrix or administratrix, to give such other bond and further security as they may think necessary; which, if given, shall be taken in the same manner as the original bond is required by law to be taken, and shall operate as a discharge of his or her former securities for any liability arising on any misconduct or default of the principal, after filing the same; and such former securities so discharged shall be held liable only for such breaches of their bond as shall have happened prior to the giving the new bond: but if such executor or administrator, executrix or administratrix, shall neglect or refuse to give such bond and security within thirty days after the making such order, his or her letters shall thenceforth be deemed and taken to be re-

Ex'rs. and adm'rs. may be required to give additional security

In what cases.

Proceedings.

On failure to give new bond, letters to be revoked.

voked and repealed, and the power and authority of such delinquent shall thereafter cease and determine.

Resignations and surrender of letters, how made. Notice.

SEC. 18. *Be it further enacted*, That if any executor or administrator shall wish to resign or surrender his executorship or administration, he shall give notice of his intention to apply to the court of probate for that purpose, by publication for two months successively in some newspaper printed in or nearest to the county in which his or her letters were granted; and if the court, on due proof of such notice having been given by the applicant wishing to resign or surrender his letters as aforesaid, shall be of opinion that he or she ought to be allowed to do so, they shall make an order to that effect,—and the person so resigning shall thereupon surrender his or her letters accordingly, and thenceforth his or her powers in relation to the estate shall cease and determine, and such person shall pay the expense of publication and the proceedings on the application.

In case of two or more ex'rs or administrators, and the letters of one be surrendered or revoked, the others to proceed

Adm'r. de bonis non, when.

SEC. 19. *Be it further enacted*, That where there are two or more executors or administrators, and the letters of some of them be revoked, repealed, or surrendered, according to the provisions of this act, the remaining executors or administrators shall discharge the duties reposed in them, in the same manner as if the person so removed or resigning were dead; and where all the executors or administrators of any testator or intestate die or their letters are revoked, repealed or surrendered as aforesaid, in cases not otherwise provided for, letters of administration of the goods remaining unadministered, with or without the will annexed, as the case may require, shall be granted to the person to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced the administration; and every such administrator, shall give the like bond, and take the like oath, and possess all the powers, perform all the duties, and incur (in the case of neglect or misconduct) all the liabilities, prescribed by law, in other cases of executors or administrators.

Ex'rs. and adm'rs resigning, &c. proceedings to compel an account.

SEC. 20. *Be it further enacted*, That whenever any letters testamentary or of administration, shall be revoked, repealed, or surrendered, according to the provisions of this act, or any executor or executrix, administrator or administratrix, shall die, the court shall order the former executor or administrator, the husband of any executrix, or administratrix, or administrators of such as are dead, to deliver over and pay to his or her successor, or the surviving or remaining executors or administrators, as the case may require, all and singular the moneys, goods, and chattels, rights and credits, titles, deeds, evidence, and securities, which were of the deceased and remain unadministered, and to account to such successor, surviving or remaining executors or administrators, for all and every the moneys, goods, chattels, rights, and credits, which shall have been previously administered, and pay over the balance which shall remain due from him, in such manner and at such times as the court shall award and order, upon examination and confirmation of such account, to be had according to the course of proceeding by law prescribed, in cases of settlement of the accounts of executors and administrators, in said court; and the court making such award or order, may enforce obedience thereto, by attachment, or by sequestration of lands and goods; and the succeeding administrator, or surviving or remaining executor or administrator, may proceed at law against the delinquent and his or her securities, or either of them, or against any other person being possessed of any of the estate of the deceased, until the end is fully attained: *Provided*, that no such suit shall be instituted against any security unless the same be commenced within seven years after the revoking, repealing or surrendering the letters, or the death of his principal, and the whole amount to be recovered against such security shall not exceed the penalty of the bond.

Securities not to be sued after seven years.

Ex'rs. and adm'rs to collect and take charge of estate.

SEC. 21. *Be it further enacted*, That it shall be the duty of every executor or administrator, immediately after receiving his letters, to collect and take into possession the goods, chattels, moneys, and effects, books, papers, and evidences of debt or of title to any estate real or personal, which were of his testator or intestate; the wearing apparel of the deceased, and of the widow and children, (if any) only excepted; and make an inventory thereof, and of all the lands and tenements of such testator or intestate, specifying particularly the description of such goods and chattels, books, papers and evidences of debt or title, the quality, quantity, and situation of such real estate, by what title held, or from whom purchased, (if known), the debts appearing to be due or to become due to such testator or intestate, the names of the persons by whom owing, date of the contract, when due, the interest (if any) accruing or to accrue, with such other and further description of the said estate real and personal, the books, papers, and evidences of debt and title, as will make the same as full and perfect inventory and description of the effects of the deceased as practicable, a duplicate of which inventory, with the oath in writing of such executor or administrator, and by him subscribed, thereto annexed, stating that the same is a full inventory and description of all the goods, chattels,

To make and return inventory on oath.

moneys and effects, real and personal, books, papers and evidences of debt, and of title of the testator or intestate, and of the debts appearing to be due or becoming due to him, as far as he can ascertain them, the wearing apparel of the deceased and of the widow and children (if any) only excepted, and that he was not indebted or bound in any contract to the testator or intestate, at the time of his death, in any manner or sum other than as set forth in such inventory, shall be returned and filed in the office of the clerk of the proper county, within sixty days after the administration granted; which oath shall be administered by some judge or justice of the peace; and if, after making the first inventory, any goods, chattels, moneys, or effects, books, papers, or evidences, as aforesaid, of the deceased, shall come to his possession or knowledge, not before inventoried, as aforesaid, such executor or administrator shall make out and return in like manner, an inventory thereof.

Additional inventories.

Proceedings against persons concealing or embezzling effects.

SEC. 22. *Be it further enacted*, That if any executor or administrator, or other person interested in any estate, shall represent on oath or affirmation to any court of probate, that he has good cause to believe, and does believe, that any person has concealed or embezzled any goods, chattels, moneys, or effects, books, papers, or evidences of debt, belonging to any deceased person, the court may require such person to appear before them, by citation, and examine him or her on oath or affirmation, for the discovery of the same; and if such person shall refuse to answer proper interrogations for that purpose, the court may commit him to gaol, there to remain until he answer or be otherwise discharged by due course of law; and if any person shall be convicted of unlawfully detaining any books, papers, or evidences of debt, belonging to any executor or administrator, as such, the court of probate may compel the delivery thereof by attachment.

Estate to be appraised.

Appraisers, their qualifications and oath.

SEC. 23. *Be it further enacted*, That it shall be the duty of the executor or administrator, as soon as may be, after he shall have collected the personal estate of the deceased, to cause the same to be appraised by three respectable, disinterested householders, of the neighborhood of the deceased, and not being of kin to any person interested, who, before entering upon their duties, shall be sworn that they are not interested, or of kin to any person interested, in the estate, as heir at law or devisee, and that they will, truly and justly, according to the best of their skill and abilities, view, appraise, and value, the slaves and other personal estate to them produced; which oath shall be in writing, signed by the said appraisers, and attested by the

Duty of appraisers.

Appraisement to be certified and filed.

Compensation of appraisers.

Additional appraisements.

judge or justice administering the same; and such appraisers shall view, appraise and value such property, and make a list thereof, specifying therein each article appraised, and the value thereof, and the total amount of such appraisement; which appraisement shall be signed and certified by such appraisers, or any two of them; and the appraisement, so certified, and the oath aforesaid, shall be filed in the office of the judge of the court of probate, of the proper county, within sixty days after letters testamentary or of administration granted; and each appraiser shall be entitled to one dollar per day for his attendance, to be paid out of the estate of the deceased; and it shall be the duty of every executor or administrator to cause like appraisements to be made and returned, of all personal estate which shall come to his hands or possession after the first appraisement, and not before appraised, from time to time, and as often as may be necessary.

Inventories and appraisements, how far evidence.

Sec. 24. *Be it further enacted*, That all inventories and appraisements, made and returned as aforesaid, may be given in evidence in any suit by or against the executor or administrator, but shall not be conclusive for or against him, if other testimony be given that the estate was *bona fide* sold for more or less than the appraised amount.

Ex'rs. and adm'rs to publish notice to creditors.

Sec. 25. *Be it further enacted*, That it shall be the duty of every executor or administrator, within thirty days after administration granted, to cause an advertisement to be published in the nearest public newspaper printed in this state, for at least three weeks, giving notice that letters testamentary or of administration have been obtained, (stating the date,) and requiring all persons having claims against the deceased, to exhibit the same to such executor or administrator, within twelve months after the date of such letters, or they may be precluded from having any benefit of such estate, and that if such claims are not exhibited within three years from the date of such letters, they will be forever barred.

Additional advertisement where there are no known heirs.

Sec. 26. *Be it further enacted*, That in all cases where an intestate has left no known heirs or legal representatives, the administrators shall, in addition to the advertisement mentioned in the preceding section, cause a notice to be published in some newspaper printed in this state and in the state in which the intestate was born, if known, and if not, then in some of the neighboring states or territories, and continue the same for six weeks successively, containing the name of the intestate, and as near as may be a description of his person, the time and place of his death, his age and place of nativity, if known, and the appraised amount of his estate.

What actions may be maintained by & against ex'rs. and adm'rs.

Sec. 27. *Be it further enacted*, That executors and administrators shall have and maintain actions against any person who shall have committed waste or trespass upon, or otherwise injured, any lands, tenements, or hereditaments of their testator or intestate in his lifetime; or shall have wasted, injured, destroyed, taken or carried away, detained, or converted to his own use, the goods or chattels of such testator or intestate in his lifetime, in the same form and with the like effect as their testator or intestate might have done; and any person, his executor or administrator, shall have the like actions against the executors or administrators of any testator or intestate who in his lifetime shall have committed waste or trespass upon, or otherwise injured, any lands, tenements, or hereditaments, or shall have wasted, injured, destroyed, taken or carried away, detained, or converted to his own use, the goods or chattels of such testator or intestate in his lifetime, in the same form and with the like effect as their testator or intestate might have done; and any person, his executor or administrator, shall have the like actions against the executors or administrators of any testator or intestate who in his lifetime shall have committed waste or trespass upon, or otherwise injured, any lands, tenements, or hereditaments, or shall have wasted, injured, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, and shall have the like process, judgment and execution as in other actions against executors and administrators.

Ex'rs. and adm'rs. to prosecute & defend suits.

To collect debts, give receipts, &c.

Ex'or. and adm'r. a competent witness, in certain cases.

Sec. 28. *Be it further enacted*, That it shall be the duty of all executors and administrators to prosecute and defend all actions which may have been commenced by or against the testator or intestate in his lifetime, which were pending at the time of his death, and which might originally have been prosecuted or maintained by or against such executors or administrators; shall collect all monies due to his testator or intestate for rents and other demands, as well those secured by mortgage as others, and give receipts, acquittances and discharges therefor; he shall commence and prosecute all actions which may be maintained by him, and are necessary in the course of his administration, and shall defend all such as are brought against him; and in all actions prosecuted or defended by or against any executor or administrator, he shall not be disqualified from being a witness as to facts occurring anterior to his qualification, on account of being such executor or administrator.

Debtor appointed ex'r. not discharg-

Sec. 29. *Be it further enacted*, That if any person shall hereafter appoint his debtor executor or executrix of his or her last will and testament, such appointment shall not be construed to discharge such executor or executrix from the payment of the debt, but the said debt shall be considered as assets in his or her hands, to be accounted for in the same manner as any other part of the personal estate; and in like manner, all debts due by any administrator to his testator or intestate, shall be considered as assets in his hands as aforesaid: *Provided*, That where any testator shall by his will expressly discharge the executor from the payment of his debt, and there lie other assets sufficient to pay the debts of his testator, he shall be discharged accordingly.

ed of his liability.

His debt considered as assets.

Proviso.

Debt due by adm'r to intestate.

SEC. 30. *Be it further enacted*, That in all cases where there is a widow, she shall be allowed (in addition to her wearing apparel) to keep, as her absolute property, her husband's wearing apparel, her cards, wheels, looms, and other implements of industry, all spun yarn, and all the cloth or clothing made up in the family by the said widow and family for their own use, all meat, bread, vegetables, groceries, and other provisions provided for the subsistence of the family, and as many beds, and bedding therefor, as shall be necessary for the children (if any) of the testator or intestate, who are under the age of twenty-one years, and reside with her and under her control,—which property shall be in addition to and over and above jointure or dower; and such widow may also take such property, goods, wares and furniture, in addition to the above, as she may think proper, not to exceed the appraised value of one hundred and fifty dollars,—and the executor or administrator shall deliver to the widow the articles aforesaid, and take her receipt therefor, and the amount thereof shall be allowed to such executor or administrator in his accounts; and the amount of the articles last mentioned, selected by the widow, shall be deducted from her dower in the personal estate of the deceased, if any remain to her after the payment of just debts of the deceased; and the property so delivered to the widow, shall in no case be liable to the payment of debts of the testator or intestate.

Allowance to widow.

Specific articles enumerated.

To be in addition to dower.

May take other property to the value of $150, to be deducted from dower.

Property not liable for debts.

SEC. 31. *Be it further enacted*, That every executor or administrator, whether it be necessary for the payment of debts or not, shall, as soon as convenient after the return of the appraisement aforesaid, sell at public sale, all such goods and chattels of the testator or intestate, (not reserved by the widow as aforesaid) specific legacies excepted, as are liable to perish, be consumed, or rendered worse by keeping, giving such credit as they shall judge best and the circumstances of the case will admit, taking bonds or promissory notes with good security of the purchaser: if such perishable goods be not sufficient for the paying of

Sales to be made at public vendue.

Of perishable articles.

Credit may be given; bonds taken.

Sale of other property.

Bonds &c taken by executors and adm'rs. may be assigned.

Notice of sales.

Proviso.

debts and expenses, the executor or administrator shall proceed to sell the other personal estate, disposing of slaves last, until the debts and legacies be all paid, taking bonds and notes with security as aforesaid, having at all times due regard to the specific legacies; and creditors and administrators may assign the notes and bonds taken as aforesaid, in payment of debts, or to legatees and distributees entitled to the estate, in discharge of such amount of their claims as is specified on such bond or note so assigned; and it shall be the duty of executors and administrators making such sales, to give previous notice of the time and place of sale by advertisement inserted for at least three weeks in some newspaper printed in this state, or by at least eight handbills put up in eight of the most public places of the county where the sale is to be made: *Provided*, That if any testator shall direct his estate not to be sold, the same shall be preserved accordingly, unless such sale be necessary for the payment of his debts.

All personal estate to be sold, where there are no heirs.

SEC. 32. *Be it further enacted*, That in all cases where there are no known heirs or legal representatives, it shall be the duty of the administrator to make sale of all the personal estate of the deceased, whether the same be necessary for the payment of debts or not, within one year after administration granted.

Court may order personal estate to be sold at private sale.

SEC. 33. *Be it further enacted*, That if any executor or administrator shall apply to the court of probate out of which the letters issued, for permission to sell the personal estate of the testator or intestate, or any part thereof, at private sale, and the court shall be satisfied that such sale would not be prejudicial to the persons interested in such estate, they may order and direct such executor or administrator to make such sale, prescribing such terms as they may think proper; and every sale so made shall be as effectual to all intents and purposes as if made publicly.

Clerk to be employed at public sales.

Qualification, oath and duties.

List of sales to be returned.

SEC. 34. *Be it further enacted*, That in all public sales of personal estate by any executor or administrator, he shall employ some competent person to act as clerk to such sale, who shall not be interested in the estate, and not of kin to any person interested as heir or devisee, who shall attend such sale, and keep a true and just account of sales made, and shall make a list of sales, specifying particularly each article sold, the price and the name of the person to whom, and shall take and subscribe an oath annexed to such list, stating that the said list contains a true account of the sales made by such executor or administrator at the time therein specified, which oath shall be taken before some judge or justice of the peace of the proper county; and the list so made and sworn to, shall be returned by the executor or administrator to the judge of the probate court of the proper county, within thirty days after the sale is completed, and such list of sale shall be evidence in the same manner and with the like effect as inventories.

Sec. 35. *Be it further enacted*, That it shall be lawful for all executors and administrators, under the direction of the courts of probate respectively, to hire out slaves, and lease real estate, belonging to the estate of their testator or intestate, for any period not longer than one year at a time; and may receive, sue for, and recover, all hire, wages and rents accruing from the hiring slaves or leasing real estate, accounting for monies arising therefrom as in other cases.

Slaves may be hired out, and real estate leased, by order of court.

Sec. 36. *Be it further enacted*, That when any houses, out houses, fences, or other improvements on the real estate of the testator or intestate (not devised by will) shall require repairs, the court of probate in which the accounts of the estate remain to be settled may, on the application of any person interested, order the executor or administrator to cause the necessary repairs to be made, if it shall appear to the court that such repairs will be for the benefit of the estate, and without prejudicing the creditors; and the expenses of making such repairs shall be allowed to such executor or administrator in his accounts.

Repairs of real estate may be made by order of court.

Sec. 37. *Be it further enacted*, That the sale and conveyance of lands and tenements, to be sold in pursuance of a will, shall be made by the executors, or such of them as shall undertake the execution of the same, or by the surviving executors, or by the administrators with the will annexed, if no other person be appointed in such will for that purpose, or if the person so appointed shall refuse to perform the trust, or die before he shall have completed the same.

Power by will to sell lands, to be executed by whom.

Sec. 38. *Be it further enacted*, That where any person shall die, having purchased lands from the United States, this state, or any individual, and shall not have completed the payment therefor, and shall not have devised his interest in such lands, or provided for the payment of the purchase money by will, the executor or administrator may be required to complete such payments out of the assets in his hands, on his own application, or on that of any person interested, by the court of probate, of the county in which ~~the~~ the letters were granted, if such court shall be satisfied that the completing such payment would be beneficial to the estate, and not injurious to the creditors; and if such payment be completed as aforesaid, the lands thereby acquired shall be disposed of as other real estate belonging to the estate; but if it shall appear to the court that there will not be assets, after the paying all just

Contracts for the purchase of lands; may be carried into effect by order of court, if assets sufficient.

Interest of testator or

intestate, to be sold; if assets be not sufficient to fulfil contract.

Lands purchased of U S may be relinquished, when and how.

debts of the deceased, sufficient to complete such payments for said lands, the court shall order and direct the executor or administrator, to sell at public auction all the right, title, and interest of the testator or intestate therein, at such times and place, and on such terms as the court shall direct; and when it shall appear to the satisfaction of the judge of probate, that it would be the interest and advantage of any estate, the said court shall order the executor or administrator to relinquish to the United States, any lands purchased from them and not paid for, or to sell and dispose of the certificate of purchase, and account for the money arising therefrom in the same manner as heretofore directed.

Court may order redemption of mortgaged property.

Or direct the equity of redemption to be sold.

SEC. 39. *Be it further enacted*, That if any person shall die, having mortgaged any real estate, or pledged any personal property, or being the owner of equity or right of redemption, of any estate real or personal, and shall not have devised the same, or provided for the redemption thereof by will, it shall be lawful for the court of probate wherein the accounts of the estate are to be settled, upon the application of any person interested, to authorise and direct the executor or administrator to redeem such estate real or personal, or any part thereof, out of the personal assets, if the court shall be satisfied that such redemption would be beneficial to the estate, and without prejudice to creditors; but if it shall appear that such redemption would not be beneficial, or would prejudice creditors, or if there be not sufficient assets wherewith to redeem such estate after the payment of the debts of the deceased, the court shall order and direct that all the right, title and interest of the testator or intestate, in and to such property, shall be sold at public auction, at such time and place as the court shall direct.

If personal estate insufficient to pay debts, real estate may be sold, on the application of ex'r. or adm'r.

Accounts to be rendered.

SEC. 40. *Be it further enacted*, That where there are not sufficient personal estate and effects charged with the payment of the debts of any testator or intestate, it shall be the duty of the executor or administrator, to make application to the court of probate of the proper county, in which his letters were granted, by petition, setting forth the facts, and praying that an order or decree may be made for the sale of any real estate of the testator or intestate, the sale of which is not provided for by will, or so much thereof as shall be necessary for the payment of the debts of the deceased; which petition shall be accompanied by a full, just, and true account of his administration, a list and amount of debts due to and by his testator or intestate, remaining unpaid, and a list of the lands of his testator or intestate, and an inventory of the personal estate remaining, with the appraised value, and an account of all other assets in his hands, all of which shall be verified by the oath or affirmation of the executor or administrator; and where such application shall not be made by the executor or administrator, it shall be lawful for any creditor, or other person interested in the estate, to make such application, giving twenty days previous notice, in writing, of his intention so to do, to the executor or administrator; and it shall be the duty of every executor or administrator upon whom any such notice shall be served, on or before the first day of the term of the court at which he is notified such application will be made, to file with the judge of the court, full, true, and perfect accounts, lists, and inventories, made out and verified in the same manner as those required to accompany a petition by him, as aforesaid; and if he fail so to do, or to show good cause to the contrary, the court may compel him to do so by attachment; and whenever any petition shall be filed as aforesaid by such executor or administrator or other person, and such account shall be filed as aforesaid, the court shall make an order, that all persons interested in the estate of the testator or intestate, be notified that application has been made to the said court for the sale of the real estate of the deceased for the payment of the debts, and that unless the contrary be shown on or before the first day of the next term of the court, a decree will be made for the sale of the whole, or so much of the real estate of the deceased as shall be sufficient for the payment of the debts, and the applicant shall cause such order to be published in some newspaper printed in this state, for six weeks successively, the last insertion to be at least two weeks before the next term of the court, and the said court, upon due proof of the publication of such notice as aforesaid, shall proceed to hear any testimony produced, and may examine all parties who appear before them, on oath, touching the application, and if necessary, may make a decree for the sale of the said real estate, or any part thereof, lying or being in any part of this state, at public or private sale, and upon such terms, as to the said court shall appear most advantageous and expedient for the more speedy and effectual payment of the debts of the deceased, and the general advantage of the estate and the persons interested therein.

Sales may be made on the application of creditors or others interested.

Notice to be published.

Proceedings of the court.

May decree sale.

SEC. 41. *Be it further enacted*, That if any executor or administrator or other person interested in any estate, shall deem it necessary, advantageous, or expedient, that any part of the personal estate of their testator or intestate be reserved, and real estate sold for the payment of debts, he or they may make application for that purpose to the court

Personal estate may be reserved, and real estate sold.

On the application of ex'r

or adm'r. or other person. of probate, in the county in which the letters testamentary or of administration were granted, by petition, setting forth the facts, and praying that the whole, or any part of the personal estate be reserved, and the real estate be sold for the payment of debts, particularly describing the personal estate prayed to be reserved, and the real estate decreed to be sold, which petition, if filed by the executor or administrator, shall be accompanied by a full, true and perfect account of the administration, a perfect list of all the debts due to or by the testator or intestate, a complete inventory and description of all the personal estate of the testator or intestate remaining unsold, and the appraised value and description of all the real estate of the deceased, and where situate, all of which shall be verified by the oath or affirmation of the executor or administrator; and if the application be about to be made by any other person, he shall give notice of his intention to make such application, to the executor or administrator, twenty days previous to the filing his petition, and such executor or administrator shall, on or before the first day of the term of the court at which he is notified that such application will be made, file with the judge of the court, full, true and perfect accounts, lists, inventories and descriptions made and verified as aforesaid, and if he fail so to do, or to shew good cause to the contrary, the court may compel him to do so by attachment; and whenever application shall be made, and such accounts filed as aforesaid, the court shall make an order, that all persons interested in the estate of the testator or intestate, be notified that application has been made to said court, to reserve from sale certain personal estate, and for the sale of the real estate, of the deceased, and that unless good cause to the contrary be shewn to the court, on or before the first day of the next term thereof, a decree will be made for the sale of the whole or so much of the real estate of the deceased as shall be necessary for the payment of debts; and it shall be the duty of the applicant to cause such order to be published for six weeks successively, in some newspaper printed in this state, the last insertion to be at least two weeks before the next term of the court; and the said court, upon due proof of the publication of such order as aforesaid, shall proceed to hear any testimony produced, and may examine the executor or administrator, and such other persons as the court may deem necessary, on oath, touching the matter before them; and the court, upon examination of the whole matter, may decree that the whole or any part of the personal estate prayed to be reserved, be reserved, and the real estate, or any part thereof, lying or being in any part of

Application of persons other than ex'r. or adm'r.

Proceedings

Publication to be made.

this state, sold at public or private sale, and the terms of sale; or dismiss the petition, or otherwise decree, as to them shall seem necessary or expedient, for the more speedy and effectual payment of the debts of the deceased, and for the general advantage of the estate and those interested therein.

Real estate to be appraised before sale.

Sec. 42. *Be it further enacted*, That before any executor or administrator shall proceed to sell any real estate of his testator or intestate, or any interest therein, by virtue of any decree or order of any court, it shall be his duty to cause the same to be appraised by three respectable disinterested householders in the neighborhood of the estate to be sold, who shall be sworn before some justice of the peace, that they will justly and truly, according to the best of their skill and abilities, view, appraise and value the estate to them shown; which oath shall be in writing, subscribed by the appraisers, and attested by the judge or justice; and such appraisers, being first sworn as aforesaid, shall view, appraise and value such estate, and shall make a certificate thereof, under their hands, which certificate shall be delivered to the executor or administrator.

By sworn appraisers.

Where sales of real estate shall be made, & how conducted.

Sec. 43. *Be it further enacted*, That all public sales of real estate of any testator or intestate, or any interest therein, to be made in pursuance of the order or decree of any court, for the payment of debts as aforesaid, shall be made at the court house door of the county in which the estate is situated, on some day while the circuit or probate court is in session, and shall be held and conducted openly and publicly by auction.

Notice of sales of real estate to be given.

Sec. 44. *Be it further enacted*, That it shall be the duty of every executor or administrator empowered to sell real estate, or any interest therein, at public sale, by virtue of any order or decree of any court as aforesaid, to cause notice of such intended sale to be published in some newspaper printed in this state for four weeks successively before the day of sale, and to cause not less than ten advertisements, written or printed, to be put up in the most public places in the county in which the sale is to be made, twenty days at least before the day of sale,—which notice and advertisements shall contain a particular description of the premises to be sold, the time, place and terms of sale, and the executor or administrator shall make such sale accordingly.

Real estate not to be sold at private sale for less than 3-4 of appraised value.

Sec. 45. *Be it further enacted*, That no real estate, ordered to be sold for the payment of debts as aforesaid, shall be sold at private sale for less than three fourths of its appraised value; nor shall the executor or administrator directly or indirectly become the purchaser of any such real

Ex'r. or administrator not to purchase at less than 3-4 of value.

estate, at public sale, at less than three fourths of its appraised value; and the executor or administrator, at the next term of the court of probate making the order after any sale is made, shall make full report of his proceedings, with the certificate of appraisement, and a copy of the advertisement,—which report shall be verified by his affidavit thereto annexed, stating that the same is a just and true report of his proceedings by virtue of the decree of the court, that he did not directly nor indirectly become the purchaser of the lands and tenements, or any part thereof, or any interest therein, and that he is not in any wise interested in any of the property sold by him, except as stated in such report.

Return of sale.

If report of sale be not affirmed, a new order to be made.

SEC. 46. *Be it further enacted*, That if the report and proceedings of the executor or administrator, in making any sales as aforesaid, be not affirmed by the court, his proceedings shall be void and of no effect in law or equity,—and the court may award a new order of sale, upon which the same proceedings shall be had as upon the original; but if such report be affirmed, then such sale shall be valid and binding on all parties concerned; and the executor or administrator (or where he was himself the purchaser, the judge of the court of probate) as soon as full payment shall be made of the purchase money, shall execute, acknowledge, and deliver to the purchaser, a deed reciting the decree or order of sale, appointment, advertisement (if any) consideration and sale, and conveying to the purchaser all the right and title, and interest, which the testator or intestate had,—which deed shall be effectual to all intents and purposes for the conveying to the purchaser all the right, title and interest which the testator or intestate had in or to the lands and premises conveyed, at the time of his death, discharged of all liability for the debts of the deceased.

If affirmed to be valid, and deed made.

Effect of deed.

Contract for the conveyance of real estate by testator or intestate, how enforced.

SEC. 47. *Be it further enacted*, That when any testator or intestate shall have entered into a contract in writing, in his lifetime, for the conveyance of any lands, tenements or hereditaments, which shall not have been executed or performed in his lifetime, and shall not have given power by will to carry the same into execution, it shall be lawful for the other party, wishing a specific execution of such contract, to file his bill or petition in the office of the court of chancery of the county in which the lands, tenements or hereditaments lie, setting forth the facts on which he relies for such specific execution, and praying a summons to issue requiring the executor or administrator to answer such petition; and such clerk shall issue a summons accordingly, returnable to the next term of the court, directed to the sheriff of the county in which the executor or administrator resides,—which shall be served and returned as other writs of summons, and proceedings shall be had thereon as in other cases; and if it shall appear to the court that a decree for the specific execution of such contract ought to be made, they shall make such decree upon such terms as to them shall appear reasonable, saving to infants, married women, persons of unsound mind, and persons absent from the United States the term of five years after their respective disabilities are removed, to appear and file their petitions or bills of review, to set aside such decree, for fraud, collusion or other cause, on which bill or petition proceedings shall be had according to the practice of courts of chancery in like cases; and where any court shall decree a specific execution of any contract as aforesaid, the executor or administrator shall make, execute, and deliver to the complainant, a deed, in pursuance of such decree, and acknowledge the same in open court, reciting the contract and decree, conveying the estate according to the decree, expressing therein a saving of the rights of infants, married women, and persons of unsound mind (if any) who shall appear within five years after their respective disabilities, to set aside such contract and sale according to law, and such deed shall be as effectual (except as to the rights saved) as if executed by the testator or intestate; and all moneys and effects coming to the hands of any executor or administrator by reason of such decree or otherwise, on or by virtue of any contract for the sale of any real estate made by their testator or intestate, shall be assets in his hands, and accounted for as other monies and effects of the testator or intestate.

Saving to persons under disability

On decree for specific execution, ex'r or adm'r to make deed.

Money accruing declared assets.

Sec. 48. *Be it further enacted*, That it shall be lawful for the court of probate wherein any estate is required to be settled, to make, from time to time, such appropriations for the support of the minor children (if any) of the testator or intestate who are not otherwise provided for, as shall be necessary, and shall not prejudice the rights of creditors, and enforce the payment thereof by the executors or administrators; and until the widow's dower shall be assigned, the court shall order such sum to be paid to her, from time to time, out of the hire of slaves and rent of real estate, as shall be in due proportion to her interest therein,—which order shall be obeyed by the executors, or administrators accordingly.

Court may make appropriations for the support of children.

And widow.

Sec. 49. *Be it further enacted*, That no executor or administrator shall be compelled to pay any debts of the deceased, until one year after taking out letters testamentary or of administration; and if any person shall bring an ac-

Ex'r. & adm'r not compelled to pay debts until tion against any executor or administrator within one year as aforesaid, such person, although he may obtain judgment for his debt or demand, shall pay all costs of suit; and in all cases where judgments are rendered against executors or administrators, to be levied of the goods and chattels, lands and tenements, of the deceased, the judgment shall not be entered against the executor or administrator, for costs, of his own proper goods; and no execution shall be issued upon any judgment obtained against the testator or intestate in his lifetime, or against his executors or administrators after his death, until the expiration of eighteen months after the granting letters testamentary or of administration.

one year after letters granted. Costs.

Executions not to issue until 18 months after letters granted.

Sec. 50. *Be it further enacted*, That all demands against the estate of any testator or intestate, shall be divided into classes, in manner following, to wit: All funeral expenses shall compose the first class; the expenses of the last sickness, the wages of servants, and demands for physic and medical attendances during the last sickness of the deceased, shall compose the second class; debts due to the state shall compose the third class; judgments obtained against the deceased in his lifetime, and rendered not more than one year before the death of the deceased, and judgments rendered prior to that time upon which execution shall have been issued within one year next before the death of the deceased, shall compose the fourth class; all demands, without regard to quality, which shall be exhibited to the executor or administrator within one year after the granting the letters testamentary or of administration, shall compose the fifth class; and all such demands as shall be exhibited as aforesaid, after the expiration of one year, and within two years after administration granted as aforesaid, shall compose the sixth class; all such demands as shall be exhibited as aforesaid, after the expiration of two years, and within three years after administration as aforesaid, shall compose the seventh class; and any debt or demand which shall not be exhibited within three years as aforesaid, shall be forever barred, saving, however, to married women, infants, persons of unsound mind, or imprisoned, the time of five years after their respective disabilities are removed.

Demands classed. 1st class. 2d class. 3d class. 4th class. 5th class. 6th class. 7th class.

Demands exhibited after three years, barred.

Sec. 51. *Be it further enacted*, That all actions depending against any testator or intestate at the time of his death, which by law survive against the executor or administrator, shall be construed as demands exhibited against such estate from the time that such action shall be revived against the executor or administrator, and classed accordingly; and all other actions commenced against such ex-

When demands deemed duly exhibited, and from what time.

ecutor or administrator after the death of his testator or intestate, shall be construed to be demands duly exhibited from the time of serving the original process on such executor or administrator; and any person may exhibit his demands against such estate, by serving upon the executor or administrator a notice, in writing, of the nature and amount of his claim, together with a copy of the instrument of writing or account upon which the claim is founded, and shall be considered as duly exhibited from the time of serving such notice; and it shall be the duty of every executor and administrator to keep a list of all demands exhibited as aforesaid, classing them as provided in the preceding section, and shall make a return thereof to the court of probate, once in every year, at the term at which he shall be required to make his annual settlements.

Executors and administrators to keep lists.

How demands to be established.

May be established by proceeding in probate court.

Sec. 52. *Be it further enacted*, That every person having any claim or demands against the estate of any deceased person, shall establish [the same] by the judgment or decree of some court of record in the ordinary course of proceedings, & exhibit a copy of such judgment, whether rendered before or after the death of the testator or intestate, to the court of probate in which the administration of his estate is required to be settled; or where any demand founded upon contract for the delivery of property or the payment of money, shall not be so ascertained, the same may be established by the judgment of the court of probate out of which the letters testamentary or of administration issued, who shall have the full power, jurisdiction and authority to hear, try and determine the same.

Proceeding to establish demands in court of probate.

Notice to be given.

Petition to be filed.

Sec. 53. *Be it further enacted*, That any person wishing to establish his demand by the judgment of the court of probate as aforesaid, shall cause a notice, in writing, to be served on one or more of the executors or administrators, notifying him or them to appear at the next term of the court of probate, to answer the demand, which notice shall be accompanied by a copy of the instrument of writing or account upon which the claim is founded, and shall be served upon one or more of the executors or administrators, by delivering a copy thereof, and the writings or accounts accompanying the same, to him or them, fifteen days at least before the commencement of the term at which he or they are required to appear, which service may be made by any person competent to be a witness in the cause, whose return, verified by affidavit before some judge or justice of the peace, shall be received in evidence of the facts therein stated, or the service and return may be made by any sheriff as other process; and the person desiring to establish any demand as aforesaid, shall, moreover, file in the office of the judge of the court of probate in which the proceedings are to be had, a petition setting forth the nature and amount of his demand, accompanied by a copy of the notice, and the account or other writing upon which the demand is founded, and the evidence of the service of such notice ten days at least before the commencement of the term of the court at which the executor or administrator is required to appear; and the said judge shall enter every proceeding so commenced, in a regular docket to be by him kept for that purpose, and shall set the causes therein for trial, issue subpœnas for witnesses and commissions to take depositions, as required in causes pending in courts of law: *Provided*, That any executor or administrator may waive the service of such notice, by his declaration in writing to that effect endorsed on such petition; in which case the cause shall be docketed, and proceedings had, as upon notice served.

Causes to be docketed.

Notice may be waived.

SEC. 54. *Be it further enacted*, That it shall be the duty of the several courts of probate, to hear and determine all causes properly docketed as aforesaid, and if neither party require a jury, or the demand shall not exceed twenty dollars, the court may decide on the validity of such demand; but if the demand exceed twenty dollars, and either party require a jury, such jury shall be immediately summoned by the sheriff, and the trial be in a summary manner without the form of pleading, and in all cases where the demand shall not be due at the time of trial, the court or jury, may adjust the same by rebating therefrom at the rate of six per centum per annum, from the time of trial until due; and the rules of evidence, in all trials, shall be the same as in trials in law in courts of record; and the court shall have power to issue compulsory process, for witnesses, grant continuances or new trials, in like manner as other courts of record, and the court shall render judgment in all cases according to the finding, or the verdict of the jury: and the costs of all such trials, shall be paid by the party against whom the decision is made; and such decision, when the amount in controversy does not exceed the sum of twenty dollars, shall be final, but when the sum in dispute, shall exceed twenty dollars, and either party shall feel himself aggrieved by the decision of the court of probate, he may appeal therefrom, to the circuit court of the proper county, at any time during the term in which the judgment is rendered, the appellant making affidavit, that he does not appeal for the purpose of delay or vexation but because he feels himself aggrieved by the judgment or decision of the court of probate, or the finding of the jury; and upon such affidavit being filed, and the costs of pro-

Causes how determined before probate court.

Costs.

Appeal when allowed and how conducted.

ceeding in the court of probate paid, such appeal shall be allowed, and it shall be the duty of the judge of the court of probate, to make out a transcript of the proceedings in said court, and transmit the same, with the original papers, to the clerk of the circuit court of the proper county, on or before the first day of the succeeding term of the said circuit court; and the clerk of the circuit court shall file such papers and transcript, and docket the same for trial, as other cases; and the circuit court shall proceed thereon on the merits *de novo*, and give such judgment as the court of probate ought to have given; and the clerk of the circuit court shall make out a transcript of the proceedings and decision of the circuit court, with the original papers, to the judge of the court where the appeal was taken.

Proceedings of circuit court on appeal.

Sec. 55. *Be it further enacted*, That when any executor or administrator shall have any demands against his testator or intestate, he shall proceed against his co-executor or co-administrator in the same manner as prescribed in the case of other persons: but if there be no such co-executor or co-administrator, he shall file his petition and other papers as aforesaid, and the court shall appoint some suitable person to appear and manage the defence on the part of those interested.

Proceedings, when ex'r. or adm'r claims as creditor of the estate.

Sec. 56. *Be it further enacted*, That it shall be the duty of the several judges of the courts of probate, in each case of administration depending in their respective courts, to keep an abstract of all judgments of other courts, filed, and of all demands ascertained by their respective courts against the estate, according to the provisions of this act, which abstract shall shew the amount and date, to whom payable, and of what class; and when any demand shall be ascertained by the judgment of any court, or by the court of probate, against any estate, such court of probate shall determine the class to which it belongs, and the judge shall make an entry thereof in his abstract, accordingly; and when any demand shall be ascertained and classed, as aforesaid, it shall be full power, warrant, and authority, to the executor or administrator, to satisfy such demand according to such classification; but nothing in this act contained, shall be construed to prevent any executor or administrator from adjusting, classing and satisfying any demand without the intervention of the court:—*Provided*, That upon the settlement of his accounts, he establish the validity thereof by the like evidence as in trials at law.

Courts to keep abstracts of demands established.

To class such demands.

Ex'r. or administrator may adjust and class demands, when.

Sec. 57. *Be it further enacted*, That all demands against the estate of any testator or intestate, shall be paid by his or her administrators or executors, as far as they have

In what order debts of dec'd. shall be paid.

assets, in the order in which they are classed by this act, and no demand belonging to any one class, shall be paid or satisfied, in whole or in part, until all demands belonging to all previous classes be first satisfied, and if there be not sufficient to pay the whole belonging to any one class (after satisfying all demands belonging to previous classes) such demands shall be paid *pro rata*.

Courts of probate to keep books, and enter therein the accounts of ex'rs and adm'rs.

SEC. 58. *Be it further enacted*, That it shall be the duty of the judges of the several courts of probate, to provide and keep well bound books, for entering and keeping therein, accounts of all executors and administrators required to settle their accounts in their respective courts, and shall keep such accounts therein, in such form and manner so as to make the same a complete record of all accounts presented and settled in such court, by each executor and administrator.

Ex'rs. and adm'rs to exhibit their accounts and settle annually.

SEC. 59. *Be it further enacted*, That all executors and administrators, shall exhibit accounts of their administration, as far as they have administered, for settlement, to the court of probate, of the county in which their letters were granted, at the first term thereof which shall happen after the expiration of one year from the date of their letters testamentary or of administration, respectively, and in like manner at the corresponding term of the court of probate of such county, in every year thereafter, until the duties of their administration be fully completed; and it shall be the duty of each judge of the court of probate, to keep a docket, in which shall be entered a list of all the executors and administrators who have not made final settlement of their accounts, the dates of their letters testamentary or of administration respectively; and the terms at which they are respectively required to make settlement of their accounts, according to the provisions of this act; and it shall moreover be the duty of said judges respectively, to put up in their several offices, at least thirty days before the commencement of any term, a list of the executors and administrators whose accounts are required to be presented for settlement at the next term; and keep such list affixed in some conspicuous place in their offices, until the end of the term, for the inspection of all persons interested; and if any executor or administrator shall neglect to present such accounts for settlement as aforesaid, it shall be the duty of said judge, immediately to issue a citation to such executor or administrator, to any county in this state, requiring him to appear and exhibit his accounts for settlement at the next term of the said court, and shew cause why an attachment should not issue against him, for not exhibiting his accounts at the term at

Probate judge to keep a docket.

Lists to be put up.

Proceeding against ex'rs. and adm'rs neglecting to settle.

which he was required to settle as aforesaid, and if such citation shall be returned not served, the judge shall issue an alias citation, which may be served on such executor or administrator, or published in some newspaper printed in this state, one month before the return thereof, and if, after service of such citation or publication, as aforesaid, no cause be shown to the contrary, such executor or administrator shall be fined by the court of probate in a sum not exceeding one hundred dollars, at the discretion of the court, for the use of the county; and such executor or administrator shall also be liable upon his administration bond, for failing to settle, as aforesaid; and the court of probate may, moreover, repeal the letters of such delinquent; and the court of probate shall have power to issue attachments, and other necessary process, to compel such settlements, directed to any county in this state, and in all cases the delinquent executor or administrator shall pay all costs.

Penalty.

Letters may be revoked, &c.

Probate court to settle accounts, and how.

SEC. 60. *Be it further enacted*, That it shall be the duty of the several courts of probate, when any executor or administrator shall present his accounts to them for settlement, agreeably to the provisions of this act, to settle and audit the same, and to allow all reasonable charges for the expenses of administration, funeral expenses, all disbursements and appropriations made by the order of the court, and a reasonable compensation for the trouble of the executor or administrator, according to law; and when any executor or administrator shall claim any allowances for disbursements by them made, they shall produce such proof of the existence of the demands, as would be required to enable the person claiming it to recover it in a suit at law, or that the same has been ascertained and adjusted according to the provisions of this act; and the said courts are hereby respectively authorised to hear the evidence relating to any demands against any deceased person's estate, at the time of settling the accounts of executors or administrators, as aforesaid, and the like proceedings shall be had therein, as herein before provided, for ascertaining such demands.

At each settlement, court to apportion assets among creditors.

SEC. 61. *Be it further enacted*, That upon each and every settlement of the accounts of any executor or administrator as provided by this act, it shall be the duty of the court to ascertain the whole amount of monies which shall have come to the hands of such executor or administrator, and belonging to the estate of the deceased, or shall have been actually received upon the sale, rent or hire of any of the estate of the said deceased, or collected on debts due to the estate, and the whole amount of debts established against such estate; and if there be not sufficient to pay the whole of the debts and expenses of administration, the moneys remaining after paying the expenses as aforesaid, shall be apportioned among the several creditors according to their several rights as established by this act,—and thereupon the court shall make an order that such executor or administrator pay the claims which have been allowed by the court according to such apportionments, reserving the apportionment made or claims which have been duly exhibited (the validity of which remains undecided) until decision thereon: and the courts, upon each and every settlement, shall proceed in like manner, until the whole debts are paid or the assets exhausted; and if on any such settlement there shall be money enough to satisfy all demands belonging to any one class duly exhibited against such estate, the court shall order the whole to be paid except such as remain undecided. And in any case of reservation, on account of undecided claims, if any such claim shall be determined in favor of the applicant, the apportionment or the whole shall be paid, as the case may be, in the same manner as if such claim had been originally allowed; but if it be determined against the applicant, it shall be accounted for as other moneys. And it shall be lawful for the creditor whose claim has been allowed and ordered to be paid, in whole or in part, to take execution out of the court of probate for the part so allotted to him, with costs (unless there be an appeal) against the body, or the proper goods and chattels, lands and tenements, of the executor or administrator, unless he pay the same within ten days after the end of the term in which the order is made,—which execution may be issued by the judge of probate, in term time or in vacation; and if any such execution shall be returned not fully satisfied, the creditor may sue out of the court of probate a *scire facias* against any one or more of the securities of such delinquent executor or administrator, reciting their bond, the order for the payment to such creditor, the execution and return, requiring such securities to show cause, if any they have, why judgment should not be rendered against them for the amount so ordered to be paid and remaining unsatisfied,—which *scire facias* may be directed to and served in any county in this state; and if upon return of any such *scire facias* served, cause to the contrary shall not be shown, the court shall render judgment against such security for the amount remaining unpaid and costs, and award execution therefor.

Court to order payment

Reserving apportionment on undecided claims.

Creditors may have execution for their portions.

May proceed against securities by scire facias.

SEC. 62. *Be it further enacted*, That if upon the settlement of the accounts of any executor or administrator, it

Court may make and

shall appear that there are not moneys sufficient in the hands of the executor or administrator, belonging to the estate, to satisfy all demands exhibited and established according to the provisions of this act, and there be debts due to, or property real and personal belonging to the estate, the court shall make such order as shall be necessary for the speedy collection of such debts, or the sale of the estate, real or personal, as to him shall seem proper for the payment of the said debts, and shall have power, from time to time, and as often as may be necessary for the payment of debts, legacies and distributions, to make such order touching the collection of debts, or the sale of any estate, real or personal, as to them shall seem proper, and to enforce obedience to all such orders by them made, by attachment against the executor or administrator, or otherwise.

enforce orders for the collection of debts, & sale of estate.

Ex'rs. and ad'mrs. not compelled to make distribution or pay legacies, under one year

Nor at any time, unless ordered by the court, or a bond to refund be given.

Sec. 63. *Be it further enacted*, That executors and administrators shall not be compelled to make distribution, or pay legacies, until one year after the date of the letters testamentary or of administration, unless the legacies specified be such kind of property as would be perishable or subject to injury if retained one year,—nor shall any executor or administrator be compelled to pay legacies, or make distribution, at any time within three years after the date of the letters aforesaid, unless ordered so to do by the court, until bond and security be given by the distributee or legatee to refund the due proportion of any debt which may afterwards appear against the estate, and the costs attending the recovery thereof, if exhibited within three years as aforesaid; and such bonds shall be for the indemnity of such executor or administrator: *Provided*, That the widow shall not be bound to give such bond before she receives the property to be selected by and delivered to her, under the provisions of this act.

Proviso.

When court may order payment of legacies or distribution to be made.

Sec. 64. *Be it further enacted*, That if upon any settlement it shall appear that there are sufficient moneys to satisfy all demands against the estate, the court shall proceed to order the payment of legacies and distribution of shares, in the same manner as in the case of debts, except that specific legacies shall be first satisfied; and the payment of such legacies and distributive shares may be enforced by attachment or execution, as the case may require.

When distribution cannot be made in kind, court may order sale.

Sec. 65. *Be it further enacted*, That when slaves or other personal property of any person intestate, shall descend, and an equal division thereof cannot be had in kind, it shall be lawful for the court of probate of the proper county, on application of any person interested, to direct the sale of such slaves or other personal estate, and cause the money arising therefrom to be distributed according to the rights of each person entitled to distribution: *Provided*, That each person entitled to distribution shall be duly notified, in writing, of such application ten days at least before such order shall be made, if such person reside within the state,—otherwise, notice shall be given, by causing a statement of the intended application to be printed in some newspaper published in this state, at least sixty days before such order shall be made.

Proviso.

When sale is ordered for the purpose of distribution, court to adjust claims of distributees.

SEC. 66. *Be it further enacted*, That in all cases where the court shall order a sale of slaves or other personal estate, by reason that an equal distribution cannot be had in kind, such court shall settle the claims of the several persons claiming as distributees, and having ascertained the proportion of each claimant, shall order the person charged with the sale of such property to distribute the moneys arising therefrom, according to the rights of each person entitled to distribution; and if any distributee shall become a purchaser of any such property, his receipt for the amount of his share shall be received in payment of an equal amount of the purchase money, and the court shall allow to the person charged with the distribution the amount of such receipt, as so much paid over and distributed under the order of the court.

Distributee becoming purchaser, his receipt good for the amount of his share.

Where real estate is sold and personal estate reserved, how distribution made.

SEC. 67. *Be it further enacted*, That when any real estate shall be sold for the payment of debts in lieu of the personal estate, under the provisions of this act, the court of probate, in making distribution of the personal estate so reserved, shall cause the same to be appraised by three disinterested and competent persons duly sworn for that purpose, and shall allow to the widow (if any) such amount only as she would have been entitled to had the amount of debts paid by moneys made by the sale of the real estate been deducted or paid out of the said personal estate.

How legatees and distributees compelled to refund.

SEC. 68. *Be it further enacted*, That if, at any time after the payment of legacies or distributive shares, it shall become necessary that the same or any part thereof be refunded for the payment of debts, it shall be the duty of the court of probate, on application of the executor or administrator, to apportion the same among the several legatees or distributees according to the amount received by them, except the specified legacies, which shall not be required to be refunded, unless the residue be not sufficient to satisfy such debts; and if any distributee or legatee shall refuse to refund according to such order or decree, the court shall, on motion of the executor or administrator, ten days previous notice in writing of such motion having been given to the legatee or distributee, enter judgment for the

Proceedings.

amount apportioned to him, and issue execution therefor: *Provided*, That either party may have an appeal to circuit court, on entering into a bond, with sufficient security, conditioned for the payment of the condemnation money and costs, if he fail to prosecute his appeal with effect; and the proceedings shall thereupon be certified to the circuit court, who shall proceed thereon as in cases of appeals from justices of the peace.

Appeal allowed.

SEC. 69. *Be it further enacted*, That when any executor or administrator shall wish to make final settlement of his executorship or administration, he shall cause an advertisement to be inserted in some newspaper published in this state, and in or nearest to the county in which administration was granted, for two months successively, notifying all creditors, and others concerned or interested in said estate, that he intends to make final settlement at the next term of the court of probate, and shall set up a copy of such advertisement in the office of the judge of the court two months before the term; and if it shall appear to the court that such notice was duly published and set up as aforesaid, and that the estate of the deceased has been fully administered, such court shall make final settlement, which shall be conducted in the same manner in all respects as annual settlements, and such executor or administrator shall not thereafter be required to make annual settlements.

Notice of final settlement to be published.

How final settlements are to be conducted.

SEC. 70. *Be it further enacted*, That it shall be lawful for all executors and administrators to give receipts, acquittances and discharges for the amount of all monies which may be received by them on account of their testator or intestate: *Provided*, That if there be more than one executor or administrator, a majority shall join in such receipts, acquittances or discharges, otherwise they shall be of no effect.

Executors and adm'rs. may give receipts and acquittances.

Provided a majority concur.

SEC. 71. *Be it further enacted*, That executors and administrators shall be allowed, as a compensation for their trouble, a sum not exceeding six per centum on the whole amount of personal estate, and not exceeding two per cent. on the money arising from the sale of lands, with such additional allowances for hiring out slaves, leasing real estate, and collecting and preserving the estate, as the court of probate shall deem reasonable.

Compensation of executors and administrators

SEC. 72. *Be it further enacted*, That if, upon the settlement of any accounts of any executor or administrator, it shall appear that there are not sufficient assets to satisfy the whole of the demands against the estate, and any creditor will suggest that such executor or administrator has not made a just and true account of the assets in his

Devastavit suggested—court to direct an issue of fact.

hands, and pray an inquiry into the same, the court shall direct an issue of fact to be made up whether there is a waste or not, which shall be tried as is prescribed by this act in cases of demands against the estate; and if no waste be found, the creditor making the suggestion shall pay costs; but if waste be found, then judgment shall be rendered in favor of such creditor against such executor or administrator, of his own proper goods and chattels, lands and tenements, for the amount found to be wasted, with costs of suit, and execution to be issued accordingly; and the money, when collected, shall be applied to the payment of the debt due to the person prosecuting, and the residue (if any) shall be apportioned among the creditors. But if it shall appear that the waste was committed by the said executor or administrator wilfully or fraudulently, then the party suing as aforesaid, shall recover of said executor or administrator double the amount so wasted, to be apportioned as aforesaid, together with costs.

Judgment, if waste be found.

In case of wilful or fraudulent waste, judgment for double the amt. wasted

SEC. 73. *Be it further enacted*, That if, after final settlement by any executor or administrator of any estate which shall by such settlement be found to be insolvent, any creditor or other person interested, shall bring an action of waste against such executor or administrator, or shall sue on his administration bond, and assign as a breach of the condition any waste or mismanagement of the estate of the deceased, and shall prove any waste or mismanagement of the estate of the deceased, at any time, by the executor or administrator, he shall have judgment against such executor or administrator for the whole value of the assets so wasted or mismanaged, as he could have drawn if they had been regularly accounted for, with costs of suit, and have execution therefor of the proper goods and chattels, lands and tenements, of such executor or administrator; and the settlement of such executor or administrator shall only be conclusive so far as they shall have applied the assets pursuant to the apportionment made by the court for the payment of debts. And the proceeds of all executions issued against any executor or administrator on any judgment recovered as aforesaid, shall be applied, first to the payment of the debts due the person prosecuting, and the residue (if any) shall be apportioned among the other creditors.

Action of waste after final settlement.

Judgment, if waste proved

Proceeds, how applied.

SEC. 74. *Be it further enacted*, That the executors and administrators of any persons who, as executor, either of right or of his own wrong, or as administrator, shall have wasted, mismanaged, or converted to his own use, any goods, chattels, moneys, effects, or estate, of any deceased person, shall be chargeable in the same manner as their testator or intestate would have been if living.

Ex'rs. and adm'rs of ex'rs and adm'rs liable to actions for waste by their testator or intestate.

Bond of ex'rs and adm'rs how sued on.

SEC. 75. *Be it further enacted*, That the bond given by any executor or administrator may be put in suit and prosecuted, from time to time, at the instance of any party injured, in the name of the state, to the use of such party, for the waste or mismanagement of the estate, or other breach of the condition of such bond; and the damages shall be assessed thereon, as on bonds with collateral conditions; but no security in any such bond shall be charged beyond the assets of the testator or intestate by reason of any omission, or mistake in pleading, or false pleading, of any executor or administrator. And the judges of the courts of probate, respectively, shall give to any person who may request the same, on payment of the legal fees, a true copy of any such bond; which copy, certified by the judge, with the seal of the court annexed, shall be evidence in any action brought on such bond.

Securities not liable beyond assets, in certain cases.

Copies of bonds, evidence.

Power of court over ex'rs and adm'rs.

SEC. 76. *Be it further enacted*, That the courts of probate shall have power, for any disobedience of any order, sentence, or decree, by them made in pursuance of this act, by any executor or administrator, to issue attachments as for contempt, to imprison the body, or proceed by sequestration of lands and goods, as fully as any court of chancery may or can do, and shall have power to issue their process for that purpose, directed to and cause the same to be executed in any county in this state.

Appeal allowed to C. Court, in certain cases.

SEC. 77. *Be it further enacted*, That if any person shall feel himself aggrieved by the decision of the court of probate, in the settlement of the accounts of any executor or administrator, or in the apportionment of moneys among creditors, or by any order directing any executor or administrator to pay legacies or make distribution, or by the decision of the court in ordering the sale of personal estate on account that equal distribution cannot be made in kind, or in making an apportionment among the legatees or distributees, or by the decision of the court, or any motion for judgment against the administrator where there are no heirs or legal representatives, for balances accruing to the state, or by any judgment, order or decree, rendered upon any suggestion of waste, according to the provisions of this act, it shall be lawful for such person, so feeling himself aggrieved, to appeal therefrom to the circuit court, at any time during the term at which the decision complained of is made; but no such appeal shall be allowed, unless the applicant will make affidavit that he does not appeal for the purpose of vexation or delay, but verily and truly because he deems himself aggrieved by the decision of the court; and upon such affidavit being filed, the appeal shall be granted, but such appeal shall not operate as a *super-*

Appeal not allowed, unless affidavit be made.

Nor be a su

persedeas, except as to the particular appealed from.

sedeas in any other matter relating to the duties of the executor or administrator, or the administration of the estate, than that from which the appeal is specially taken, and in all cases not in this section enumerated, or in which an appeal is not specially allowed by this act, the decision, order, sentence or decree, of the court of probate, shall be final.

A statement in the nature of exceptions to be made in cases of appeal.

SEC. 78. *Be it further enacted*, That in all cases of appeal from the settlement of any account of any executor or administrator, it shall be the duty of such party to make out and tender to the court, during the term at which the appeal is taken, a statement, in the nature of a bill of exceptions, setting forth specially each item, the allowance or rejection of which was objected to by such party at the time of the settlement of the account, and the decision of the court thereon; and in all other cases of appeal, under the provisions of the preceding section, the appellant shall make out a like statement of the points decided by the court of probate, upon which the opinion of the court is excepted to, setting forth such opinion and exception; and if such statements are true, the judge shall sign and seal the same; and upon neglect or refusal so to do, the like proceedings shall be had as in cases of ~~bills~~ of exceptions in the circuit court.

Proceedings on appeal.

SEC. 79. *Be it further enacted*, That when any appeal shall be taken as aforesaid, the judge of the court of probate shall make out a complete transcript of the record and proceedings in the matter appealed from, and transmit the same, together with the original papers filed in his office relating to the items or decisions so excepted to and appealed from, to the clerk of the circuit court of the proper county, who shall docket the same, as other causes.

SEC. 80. *Be it further enacted*, That on every appeal from the settlement of accounts, the circuit courts shall proceed *de novo* as to such items, the allowance or rejection of which, was excepted to in the court of probate, and shall cause their decision thereon to be certified, with the original papers, to the court of probate from which the appeal was taken, who shall proceed thereon according to the decision of the circuit court; and in all other cases of appeal, as aforesaid, the circuit court shall first hear and determine the points or decisions excepted to, and if they shall be of opinion that the court of probate erred on any material question, whether of law or fact, they shall reverse the decision or order of the court of probate, and grant to the applicant a new trial, which shall be had in the circuit court, in the same manner, and the same decision or order shall be made thereon as the court of probate ought to have made; and the clerk of the circuit court shall certify a transcript of the record, and their proceedings, and the original papers, to the court of probate whence the appeal was taken, who shall proceed therein according to the decision of the circuit court.

This act to extend to ex'rs and adm'rs. who have not made final settlement.

Sec. 81. *Be it further enacted*, That in all cases of executors and administrators, who shall not have completed their administration before the taking effect of this act, the courts of probate shall proceed to cause settlements to be made, and the administration completed, according to the provisions of this act, without delay. This act shall take effect and be in force from and after the fourth day of July next. [*Approved, February* 21, 1825.]

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ADVERTISEMENTS.

AN ACT concerning the publication of advertisements. 17 Jan. 1825.

What shall be evidence of publication in newspapers.

Sec. 1. *Be it enacted by the general assembly of the state of Missouri*, That when any notice or advertisement shall be required by law, or the order of any court, to be published in any newspaper, the affidavit of the printer or publisher, with a copy of such advertisement annexed, stating the number and date of the papers in which the same was published, and verified by his oath or affirmation, taken and subscribed before some judge or justice of the peace, shall be sufficient evidence of the publication therein set forth.

Costs of publication, how adjusted and paid.

Sec. 2. *Be it further enacted*, That when any notice or advertisement, shall be duly published as aforesaid, relating to any cause, matter or thing, depending in any court of record, the same shall be paid by the party at whose instance the same was published, who shall exhibit his account therefor to the proper court, which, or so much thereof as shall be deemed reasonable, may be taxed as costs, or otherwise allowed, in the course of the proceeding to which such advertisement relates; and when such advertisement shall be made by any public officer, authorised by law so to do, the reasonable expenses thereof shall be allowed and paid out of the state or county treasury, as other demands and charges of the like nature.

Penalty for defacing, obliterating, tearing, or destroying advertisements.

Sec. 3. *Be it further enacted*, That if any person shall intentionally deface, obliterate, tear down, or destroy, in part or whole, any copy, or transcript, or extract, from any law of the United States, or of this state, or any proclamation, publication, advertisement, or notification, set up at any place within this state, by authority of any law of the United States, or of this state, or by the order of any court, such person shall, on conviction thereof by indictment, be fined in a sum not exceeding one hundred dollars, nor less than five dollars, to the use of the county in which the offence is committed; and may be imprisoned for any time not exceeding thirty days, in the discretion of the court: *Provided*, That this section shall not be construed to extend to the defacing, obliterating, tearing down, or destroying, any law, proclamation, publication, advertisement, or notification, after the time for which the same was by law to remain set up, shall have expired.

Proviso.

[*Approved*, *January* 17, 1825.]

ALIENS.

6th Dec 1820.

AN ACT enabling aliens to hold real estate.

Aliens enabled to hold and transmit land.

Be it enacted by the general assembly of the state of Missouri, That from and after the taking effect of this act, all aliens residing in any of the United States or territories, who shall have made a declaration of their intention of becoming citizens of the United States, by taking the necessary oath in due form of law, shall be, and are hereby declared to be capable in law of inheriting and transmitting the inheritance of real estate within this state, of acquiring and holding the same by descent and purchase, of alienating the same or any part thereof, and shall have the same rights, and incur the like duties in relation thereto, as if they were citizens of the United States. This act shall take effect and be in force from and after the passage thereof. [*Approved*, *December* 6, 1820.]

AMENDMENTS AND JEOFAILS.

24 Dec. 1824.

AN ACT concerning Amendments and Jeofails.

Misprison of clerks may be amended in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That by the misprison of a clerk, in any place wheresoever it be, no record or process shall be annulled or discontinued by mistaking, in writing, one syllable or one letter too much or too little; but as soon as the thing is perceived, by challenge of the party, or in other manner, it shall be immediately amended in due form, without giving advantage to the party that challenges the same because of such misprison;* and the court before whom such plea or record is made or shall be depending, as well by adjournment as by way of appeal or error, or otherwise, shall have power and authority to amend such record and

(*) 14 Edw. 3.

As well after as before judgment.

process as aforesaid, as well after judgment, in any suit, plea, record or process given, as before judgment, as long as the same record and process is before them.*

(*)9 Edw. 5:

Courts may amend misprison of clerks.

SEC. 2. *Be it further enacted*, That the court in which any process, declaration, count, plea, warrant of attorney, writ, pannel, or return, is or may be, while the same remains before them, shall have power to examine such records, processes, declarations, counts, pleas, warrants of attorney, writs, pannels, and returns, by them and their clerks, and amend (in affirmance of judgments of such records and processes) all that which to them, in their discretion, seemeth to be misprison of the clerks therein;† so that by such misprison of the clerks no judgment shall be reversed or annulled. And if any record, process, declaration, count, plea, warrant of attorney, writ, pannel, or return, be certified defective otherwise than according to the writing which thereof remaineth in the offices, courts, or places from whence they are certified, the parties, in affirmance of the judgments of such records and process, shall have advantage to allege that the same writing is variant from the said certificate; and that being found and certified, the same variance shall be, by the said court, reformed and amended according to the first writing.‡

(†)8th Hen.6.

Variance between record and certificate thereof, amendable in certiorari.

(‡) 8 H 6.

Misprisons of clks. sheriffs, &c amendable.

SEC. 3. *Be it further enacted*, That the courts before whom any misprison or default is or shall be found in any record or process, which is or hereafter shall be depending before them, as well by way of appeal or error as otherwise, or in the returns, (the same, made or to be made by sheriffs,coroners or any other,) by misprison of the clerk of any of the said courts, or by misprison of the sheriffs, under sheriffs or deputies, coroners or their clerks, or other officers, clerks, or other ministers whatsoever, shall have power to amend such defaults and misprison according to their discretion, and by examination thereof by the said courts, to be taken where they shall think needful; and all such amendments may be made as well after a judgment given upon verdict, confession, *nihil dicit*, or *non sum informatus*, as upon matter of law pleaded.

Judgment or decree not to be reserved for erasures or interlineations, subtraction or diminution.

SEC. 4. *Be it further enacted*, That for errors assigned, or to be assigned, in any record, process, warrant of attorney, writ original or judicial, pannel or return, for that in any places of the same there be rasures or interlineations, or that there be any addition, subtraction, or diminution of words, letters, or titles, or parcels of letters, found in any such record, process, warrant of attorney, writ, pannel, or return, no judgment, or record, or decree, shall be reversed or annulled.

SEC. 5. *Be it further enacted*, That record and process.

Records not to be altered

real and personal or mixed, whereof judgment or decree shall be given and enrolled, or things touching such pleas, shall in no wise be amended nor impaired by new entering of the clerks, either by the record, or things certified in no term subsequent to that in which such judgment or decree is or shall be given and enrolled.

Insufficient pleading. Discontinuance, aided after verdict.

Sec. 6. *Be it further enacted*, That if any issue hath been or shall be tried by any court or jury, and be found for either party in any court of record, then the court by whom judgment ought to be given shall proceed and give judgment in the same, any mispleading, lack of color, insufficient pleading, or jeofail, or any miscontinuance, discontinuance, misconceiving of process, misjoining of the issue, lack of warrant of attorney, or any other default or negligence of any of the parties, their counsellors or attornies; and the said judgments thereof, so to be had and given, shall stand in full strength and force to all intents and purposes, according to the said verdict or finding, without any undoing the same by appeal, writ of error, or false judgments, in like form as though no such default or negligence had ever been had or committed.*

(*)32 H. 8. c. 30.

Judgt. not to be stayed or reversed for want of form, &c.

Sec. 7. *Be it further enacted*, That if a verdict of a court or jury shall hereafter be given for either party in any court of record, the judgment thereupon shall not be stayed or reversed by any default of form or lack of form in any writ, original or judicial, count, declaration, plaint, bill, suit or demand, for want of any writ, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process, upon or after any aid-prayer or voucher; nor shall any such record or judgment after verdict, to be given hereafter, be reversed for any the defects or causes aforesaid.†

(†)18 Eliz. c 14.

After verdict judgt. not to be arrested or reversed, for Variance. Want of averment of life or lives. Or infant appearing by attorney.

Sec. 8. *Be it further enacted*, That if any verdict be rendered by the court or jury for either party in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any variance in form only between the original writ or process and the declaration, petition, plaint or demand, or for lack of an averment of any life or lives of any person or persons, so as upon examination the said person be found to be in life, or by reason that any of the persons in whose favor the verdict is rendered is an infant, and appeared by attorney.‡

(‡)21 Jac. 1. c 13

Judgt. not to be reversed or stayed, For want of form.

Sec. 9. *Be it further enacted*, That if any verdict shall hereafter be given by a court or jury for either party, in any court of record, judgment thereon shall not be stayed or reversed for any default in form or lack of form, or by reason that there are not pledges or but one pledge to prosecute returned upon the original writ, or because the name of the sheriff is not returned upon the original writ or process, or for default of entering pledges upon any petition or declaration, or for default of alleging the bringing into court any bond, bill, indenture, or other deed or writing mentioned in the declaration or other pleading, or for default of allegation of bringing into court letters testamentary or of administration, or by reason of the omission of the words "*with force and arms*," or "*against the peace*," or for or by reason of mistaking the Christian or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month or year, by the clerk, in any bill, petition, declaration, or pleading, where the right name surname, sum, day, month or year, in any writ, record or proceeding, or on the same record where the mistake is committed, is or are once truly and rightly alleged, whereunto the party might have demurred and shown the same for cause; nor for want of the averment or words "*and this he is ready to verify*," or "*and this he is ready to verify by the record*," or for not alleging "*as appears by record*," or that there was no right venue, so as the cause was tried by a jury of the proper county or place where the action is laid; nor shall any judgment after verdict be reversed for want of entering that the person against whom such judgment is given "*be in mercy*" or "*be taken*," or by reason that the words "*be taken*" are entered for "*be in mercy*," or that the words "*be in mercy*" for "*be taken*," nor for that in the judgment the words "*it is granted*" are entered for "*it is considered*," nor for that the increase of costs after the verdict in any action are not entered at the request of the party for whom judgment is given, nor by reason that the costs on any judgment are not entered to be by consent of the plaintiff; but that all such omissions, variance, defects, and all other matters of the like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered, shall be amended by the courts where such judgments are or shall be given, or whereunto the record is or shall be removed by appeal or writ of error.*

Want of pledges.

Want of averments, &c.

Except on special demurrer.

Want of formal words in entering judgment.

(*) 16 & 17, Car. 2.

Sec. 10. *Be it further enacted*, That where any demurrer shall be joined and entered in any action or suit, in any court of record, the judges shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, or defect for want of form in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set

On demurrer, want form.

To be special.

down and express, together with his demurrer as causes of the same, notwithstanding that such imperfection, omission, or defect, might heretofore have been taken to be matter of substance, so as sufficient matter appear on the said pleadings, upon which the court may give judgment according to the very right of the cause; and therefore no advantage or exception shall be taken of or for an immaterial traverse, of or for default of entering pledges upon any petition or declaration, or for the default of alleging the bringing into court any bond, bill, indenture, or other deed or writing mentioned in the declaration or other pleadings, or of or for the default of alleging the bringing into court of letters testamentary or of administration, or of or for the omission of the words "*with force and arms*" and "*against the peace*," or either of them, or of or for want of the averment or words "*and this he is ready to verify*" or "*and this he is ready to verify by the record*," or of or for not alleging "*as appears by record;*" but the court shall give judgment according to the very right of the cause as aforesaid, without regarding any such imperfections, omissions and defects, or other matter of like nature, except the same shall be specially and particularly set down and shown for cause of demurrer; and no judgment shall be reversed for any such imperfection, omission, defect, or for want of form, except such only as are before excepted. And after demurrer joined, the court before whom the same shall be pending may, from time to time, amend all and every such imperfections, omissions, defects and want of form as are before mentioned, other than those only which the party demurring shall specially and particularly set down, together with his demurrer as aforesaid.

No advantage or exception.

For immaterial traverse, &c

Want of averments.

Unless on special demurrer.

4 & 5, Ann, ch. 16.

Sec. 11. *Be it further enacted*, That every thing herein before contained shall extend to all judgments which have been or shall be entered upon confession, *nil dicit* or *non sum informatus*, in any court of record; and no such judgment shall be reversed; nor any judgment upon any writ of inquiry of damages executed thereon, shall be stayed or reversed, for or by reason of any imperfection, omission, defect, matter or thing which would have been aided and cured by this act in case a verdict had been given in such action or suit, so there be an original writ duly issued according to law.

This act to extend to Judgments, by nil dicit non sum informatus, &c

Sec. 12. *Be it further enacted*, That this act shall extend to all suits in any court of record, for the recovery of any debt due the state, or any duty or revenue thereto belonging; and also to all writs of mandamus, and informations in the nature of quo warranto, and proceedings thereon.

This act to extend to actions brought by State, mandamus, quo warranto.

Sec. 13. *Be it further enacted*, That all writs of error wherein there shall be any variance from the original record, or any other defect, may and shall be amended and made agreeable to such record by the respective courts where such writs of error are or shall be made returnable.

On error, variance may be demanded.

SEC. 14. *Be it further enacted*, That no part of this act shall extend to any indictment or presentment for any criminal matter, or process upon the same; nor to any writ, action or information upon any popular or penal statute; nor to any outlawry, or process thereupon, in order thereunto. [*Approved, December 24th*, 1825.]

This act not to extend to proceedings in criminal cases.

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APPRENTICES AND SERVANTS.

AN ACT concerning apprentices and servants.

17th January, 1825

SECTION 1. *Be it enacted by the general assembly of the state of Missouri*, That every person bound by indenture, of his or her own free will, and with the consent of his or her father, or if he be dead, of the mother, or guardian, and to be expressed in such indenture, and signified by such parent or guardian sealing and signing the same indenture, and not otherwise; or by the court of probate, as is hereinafter directed; to serve as clerk, apprentice, or servant, in any profession, trade, or employment, until the age of twenty-one years, or for any shorter term, although such clerk, apprentice, or servant, shall be within the age of twenty one years at the making of said indenture, shall be bound to serve for the term in the said indenture specified, as fully as if the same clerk, apprentice, or servant, was of full age at the making of the same.

What indentures shall be valid and binding.

SEC. 2. *Be it further enacted*, That it shall be lawful for any male infant under the age of twenty one years, or any female infant under the age of eighteen years, who shall have no parent living, nor any guardian, by and with the approbation of the court of probate of the county where such infant shall reside, to bind himself or herself, an apprentice, as aforesaid, until such infant, if a male, shall arrive at the age of twenty-one years, and if a female, to the age of eighteen years; which approbation shall be endorsed on the indenture; and every such indenture shall be valid and binding.

Males under 21. and females under 18, may be bound by probate court.

SEC. 3. *Be it further enacted*, That when the father is not in legal capacity to give the consent aforesaid, or when he shall have wilfully abandoned his family for the space of six months, without making suitable provision for their support, or has become an habitual drunkard, the mother shall have the same power to give such consent as if the father were dead; which facts of incapacity, desertion, and

In case of the incapacity of the father, the mother may bind.

Incapacity how established.

drunkenness, shall be decided and found in the court of probate by a jury of the vicinage empannelled for that purpose, before the said indentures shall take effect; and an endorsement on the said indentures under the seal of the court, that the same are approved of by the court, shall be sufficient evidence of the mother's power to give such consent as aforesaid; but if the jury so empannelled as aforesaid, shall not find that the facts charged, to wit, incapacity and drunkenness or desertion, then the person at whose instance such proceedings may have been had, shall pay all costs attending the same, to be collected by the court of probate as costs in other cases.

Children of poor persons, of habitual drunkards, of persons of ill fame, may be bound by probate court.

SEC. 4. *Be it further enacted*, That it shall be lawful for the court of probate, in their respective counties, to bind out any poor child who is or shall be chargeable to the county, or shall beg for alms, or whose parents are or shall be chargeable to the county, or shall beg for alms, or the children of any poor and needy family, where the father is an habitual drunkard, or if there is no father, where the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood, to be apprentices or servants, according to their degree and ability, when the said court shall see convenient, until such child, if a male, shall arrive at the age of twenty-one years, and if a female, to the age of eighteen years; and every orphan or minor who has no estate sufficient for maintainance, may be bound by his or her guardian under the order and direction of the court as aforesaid, and that the articles of agreement, or indentures, for binding such infant, shall be as effectual, to all intents and purposes, as if such infant were of full age, and by indenture or covenant bound him or herself; and the counterpart of such indenture or articles of agreement, for the benefit of the person so bound, shall be deposited with the clerk of the court in which such binding shall take place, for safe keeping.

Minors without estate, may be bound by the court.

Indentures made by order of court, to contain certain covenants.

SEC. 5. *Be it further enacted*, That in all indentures and contracts by the court of probate, for the binding or putting out of any orphan or poor child, as an apprentice or servant, there shall always be inserted, among other covenants, a clause to the following effect: that every master or mistress, to whom such child shall be bound as aforesaid, shall cause such child to be taught to read and write, and the ground rules of arithmetic; and shall also give unto such child a new Bible, and two new suits of clothes suitable to his or her condition, at the expiration of his or her term of service; and that he or she will not remove such clerk, apprentice, or servant, out of the jurisdiction of this state. And further, it shall be the duty of the said court of probate, to see that the terms of the said indentures or contracts, and the covenants therein contained, be fulfilled, and that such child be not ill used. And the said court is hereby required to enquire into and redress any grievances which may occur in the premises, in such manner as is prescribed by law: *Provided, however*, That when the said apprentice is a negro or mulatto child, it shall not be the duty of the master or mistress to cause such apprentice to be taught to read or write or a knowledge of arithmetic. But if such apprentice or servant be a free negro or mulatto, he or she shall be allowed, at the expiration of his or her term of service, a sum of money in lieu of education, to be assessed by the probate court.

Court to require the execution of covenants.

And redress grievances.

Negro and mulatto apprentices, not to be educated.

SEC. 6. *Be it further enacted*, That the age of every infant, who shall be bound to serve as a clerk, apprentice, or servant, according to the preceding sections, shall be mentioned or inserted, in his or her indenture.

Age to be stated in indentures.

SEC. 7. *Be it further enacted*, That all indentures, covenants, promises, and bargains, for the having, taking, or keeping of any clerk, apprentice, or servant, hereafter to be made or taken, otherwise than is limited and prescribed by this act, shall be utterly void in law, as against such clerk, apprentice or servant.

Indentures, contracts, &c. not made pursuant to this act, void.

SEC. 8. *Be it further enacted*, That the court of probate, shall at all times receive the complaints of apprentices who reside within the jurisdiction of such court, against their masters or mistresses, alleging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, or want of instruction in their trade or profession, or that he or she is in danger of being removed out of the jurisdiction of this state, or for the violation of any of the articles or covenants, in the indentures of apprenticeship contained, and may hear and determine such cases, the facts having been previously ascertained by a jury, and make such order thereon as in their judgment will relieve the party injured, in future; and shall have authority, if they think proper, to discharge such clerk, apprentice or servant, of and from his or her clerkship, apprenticeship, or service; and in case any money or other thing shall have been paid, given, contracted, or agreed for, by either party, in relation to the said clerkship, apprenticeship, or service, they shall make such order concerning the same, as to them shall seem just and reasonable. And if the said clerk, apprentice, or servant, so discharged, shall have been bound originally by the court of probate, it shall be the duty of the said court again to bind him or her, if they shall judge necessary. The said court of pro-

Courts of probate to hear and determine complaints of apprentices and servants, against masters, &c.

May dissolve contract.

May rebind.

Shall hear and determine complaints of masters and mistresses.

bate shall also, in the same manner, hear and determine the complaints of masters and mistresses, against their clerks, apprentices, and servants, for desertion without good cause, or for any misdemeanor, miscarriage, or ill behavior, and may punish any such clerk, apprentice, or servant, according to the nature and aggravation of his or her offence, by imprisonment, not exceeding ten days; and in addition to the above punishment, where the offence shall be desertion without good cause, the court may order the said clerk, apprentice, or servant, guilty thereof, to make restitution, by payment of a sum not exceeding ten dollars, for each and every month he may be so absent, to be collected as other debts, after such servant or apprentice shall become of full age. The awarding of costs on proceedings under this section, shall be in the discretion of the court.

Costs.

Desertion, and other misconduct, how punished.

Warrant to apprehend.

Sec. 9. *Be it further enacted*, That if any clerk, apprentice, or servant, bound as aforesaid, shall abscond or depart from the service of his or her master or mistress, without leave, or shall rebel against, or assault, his or her master or mistress, it shall be lawful for any judge or justice of the peace, on complaint made, and sufficient cause shewn, on oath, by the master or mistress, or any one on his or her behalf, to issue a warrant, directed to any sheriff or constable within this state, or to any discreet and responsible person, to be named in the said warrant, commanding him or them to apprehend the said clerk, apprentice, or servant, wherever he or she may be found in this state, and to bring him or her before the probate court, of the proper county, to be dealt with according to law. And the said warrant shall be an authority to any sheriff or constable within this state, or other person named in the said warrant, to execute the same in any part of the state. And if upon the return of any such warrant, the said probate court shall not be in session, it shall be the duty of the person serving the same, to carry the said clerk, apprentice, or servant, before some judge, or justice of the peace, of the said county, who shall take bail for the appearance of the said clerk, apprentice, or servant, at the next term of the said probate court, to answer to the complaint of the said master or mistress; or for want of bail, shall commit him or her to prison, until the setting of the next court of probate, unless the said master or mistress shall consent to his or her discharge. The costs of the process, service, and commitment, shall be paid in the first instance by the master or mistress; but the court, upon final hearing, may order such clerk, apprentice, or servant, to make retribution of such costs, by future services, after

Costs.

the expiration of the time for which he or she shall have been bound.

Penalty for counselling persuading, or enticing apprentice, &c to desert, rebel, &c.

SEC. 10. *Be it further enacted*, That every person who shall counsel, persuade, entice, aid, or assist, any clerk, apprentice, or servant, to run away, or absent himself or herself from the service of his or her master or mistress, or to rebel against or assault his or her master or mistress, shall forfeit and pay a sum, not less than twenty nor more than five hundred dollars, to be sued for and recovered by action on the case, with costs, by such master or mistress, in any court having jurisdiction thereof.

Penalty for harboring apprentices, &c.

SEC. 11. *Be it further enacted*, That every person who shall entertain, harbor, or conceal, any clerk, apprentice, or servant, knowing such clerk, apprentice, or servant, to have run away, or to have absented himself or herself from the service of his or her master or mistress, without leave, shall forfeit and pay one dollar for every day's entertaining, harboring, or concealing, as aforesaid; to be sued for and recovered by action of debt, with costs, by such master or mistress, in any court having jurisdiction thereof.

Executors may bind apprentices when authorized by will.

SEC. 12. *Be it further enacted*, That the executor or executors, who are or shall be, by the last will and testament of a father, directed to bring up his child, or children, to some trade or calling, shall have power to bind such child or children, by indenture, in like manner as the father if living might have done; or shall raise such child or children according to such direction.

Apprentices and servants not to be removed out of the state.

Proceedings on complaint.

Master to enter into recognizance.

SEC. 13. *Be it further enacted*, That it shall not be lawful for any master or mistress, to remove any clerk, apprentice, or servant, bound to him or her, as aforesaid, out of this state; and if at any time it shall appear to any judge or justice of the peace, upon the oath of any competent person, that any master or mistress is about to remove, or cause to be removed, any such clerk, apprentice, or servant, out of this state, it shall be lawful for such judge or justice to issue his warrant, and cause such master or mistress to be brought before him; and if, upon examination, it appears that such apprentice, clerk, or servant, is in danger of being removed without the jurisdiction of this state, the judge or justice may require the master or mistress to enter into recognizance, with sufficient security, in the sum of one thousand dollars, conditioned, that such apprentice, clerk, or servant, shall not be removed without the jurisdiction of this state, and that the said master or mistress will appear with the apprentice, clerk, or servant, before the probate court, at the next term thereof, and abide the decision of the court therein; which recognizance

Refusing to enter into recognizance.

shall be returned to the probate court, and the said court shall proceed therein, in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance, and otherwise proceed according to law and justice. But if the master or mistress, when brought before any judge or justice, according to the provisions of this section, will not enter into a recognizance as aforesaid, if required so to do, it shall be lawful for such judge or justice, to commit the custody of such apprentice, clerk, or servant, to some other proper person, who will enter into recognizance, as aforesaid.

How apprentice may be disposed of, if master wishes to remove out of the State.

Sec. 14. *Be it further enacted*, That whenever any master or mistress of any clerk, apprentice or servant, bound by the court as aforesaid, shall wish to remove out of this state, or to quit his or her trade or business, it shall and may be lawful for him or her to appear, with his or her apprentice, before the probate court of the proper county; and such court shall shall have power, if they deem it expedient, to discharge such clerk, apprentice or servant from the service of such master or mistress, and again bind him or her, if necessary, to some other person of the same trade, business or employment.

In case of the death of one of two or more masters, contract to survive.

In case of the death of all the masters, &c. how apprentice to be disposed of.

Sec. 15. *Be it further enacted*, That when any person shall become bound, as clerk, apprentice or servant, according to the provisions of this act, to two or more persons, and one or more of them die before the expiration of the term of service, the indentures and contracts shall survive to and against such survivor or survivors; and in case of the death of all the masters or mistresses, in any such indenture or contract named, before the expiration of the term of service, the executors or administrators shall bring the indenture and contracts, and the clerk, apprentice or servant therein named, before the court of probate of the proper county; and such court shall, if necessary, again bind such apprentice, clerk or servant to some other person.

Apprentices deserting the service, liable for damages after arriving at full age.

Sec. 16. *Be it further enacted*, That any clerk, apprentice or servant, bound according to the provisions of this act, who shall absent himself or herself from the service of his or her master or mistress, without leave first obtained, or who shall run away, so that the master or mistress shall be deprived of his or her service during the remainder of the term, or any part thereof, for which he or she was bound to serve, then and in that case it shall and may be lawful for the master or mistress of such clerk, apprentice or servant to have an action on the case, in any court of competent jurisdiction, against such clerk, apprentice or servant, after he or she arrives at full age, for the damage that such master or mistress may have sustained by reason of the absence of such clerk, apprentice or servant: *Provided*, That such action shall be brought within six years after such clerk, apprentice or servant shall arrive at full age. [*Approved, January 17th*, 1825.]

Limitation of action.

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ARBITRATIONS.

AN ACT regulating Arbitrations and References.

19th February, 1825.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That all persons desirous to end any dispute or controversy, by arbitration, for which there is no other remedy but by action at law, or suit in equity, may agree that their submission to arbitration shall be made a rule of the circuit court, and may insert such their agreement in the submission, or in the condition of the bond or promise; which agreement, on producing an affidavit of the due execution thereof, and filing it in the court, may be entered of record, and rule of court shall thereupon be made, that the parties shall submit to, and be finally concluded by such arbitration; or such persons desirous to end any dispute or controversy as aforesaid, may personally appear before the circuit court and acknowledge, that they have mutually agreed to refer all their matters of difference, or any particular dispute, to the arbitrament of certain persons, by them agreed on and named; and on their desiring such submission to be made a rule of court, the same may be entered of record, and a rule of court shall be made, that the parties shall submit to, and finally be concluded by such arbitration; and in either of the above cases, when the award shall be for the payment of money only, the same being returned into and accepted by the court, judgment shall be rendered thereon for the party in whose favor the award is made, to recover the sum awarded, to be paid to him, together with the costs of the arbitration and the costs of court, and execution may issue thereon accordingly: *Provided*, That no judgment shall be entered on any such award, unless it shall appear to the court that a copy of the award, and notice to appear and show cause why judgment should not be entered on the same, has been previously served on the party to be charged with the judgment, at least four days before the motion for judgment shall be made; and no judgment shall be entered on motion as aforesaid, after one year from the time of making the award.

Controversies may be referred to arbitration.

By submission in writing, and ru of court.

Or by personal appearance and submission in open court.

Judgment on award.

Copy, first served, &c.

Sec. 2. *Be it further enacted*, That when the award shall be for the performance of any thing, other than the payment of money only, the same being returned into and ac-

Proceedings on awards, other than for payment of money.

cepted by the court, as aforesaid, obedience thereto may be enforced in the said court by attachment, in the same manner as obedience may be compelled to any other rule of court.

Awards obtained by undue means, utterly void.

Sec. 3. *Be it further enacted*, That any arbitration, umpirage or award, procured by corruption or undue means, shall be judged and esteemed void and of no effect, and may be set aside in law or equity; in equity, by proceedings on original bill, and at law, on motion in the court where the submission is made, a rule of court, or where any suit or proceedings shall be instituted on the arbitration bond, submission or award: *Provided*, That complaint be made of such corruption or undue practice before final judgment upon the said bond, submission or award.

Objection to be made before judgt.

How actions pending may be referred.

Sec. 4. *Be it further enacted*, That when any personal action shall be pending in the circuit court, and the parties desire to refer the same, it may be done by a rule of the court; and the report of the referees being approved of by the court, and entered of record, shall have the same effect as the verdict of a jury, and the like judgment shall be entered upon it, as if the same finding had been by a jury; and the costs of the reference shall be taxed with the other costs of the suit.

Process for witnesses to attend before arbitrators.

Sec. 5. *Be it further enacted*, That the several clerks of the circuit courts, and the justices of the peace, in their several counties, may issue subpœnas for the attendance of witnesses before arbitrators and referees; and if any witness, after being duly summoned, shall fail to attend, the arbitrators or referees may issue an attachment, to compel his attendance; and the said witness shall moreover be liable to the party, for refusing to attend, the same as in trials at law. The arbitrators and referees may administer oaths and affirmations to witnesses; may punish contempts committed in their presence during the hearing of a cause, the same as a court of record; may continue the hearing of a cause from time to time, upon good cause shewn; and may admit depositions to be read in evidence, the same as in trials at law.

Penalties on witnesses refusing.

Arbitrators to be sworn.

Sec. 6. *Be it further enacted*, That each arbitrator and referee, shall, before he proceed to the duties of his appointment, take an oath or affirmation, faithfully and fairly to hear and examine the cause in question, and to make a true and just report or award, (as the case may be) according to the best of his skill and understanding; which oath or affirmation, any judge or justice of the peace of this state, is authorised and required to administer.

Compensation of arbitrators.

Sec. 7. *Be it further enacted*, That each arbitrator and referee shall be allowed for every day's attendance to the business of his appointment, one dollar and fifty cents, to be paid in the first instance by the party in whose favor the award or report shall be made, but to be recovered of the other party, with the other costs of suit, if the award or report shall entitle the prevailing party to recover costs. Witnesses shall receive the same fees for attendance at arbitrations and references, as shall be allowed them in the circuit courts. Sheriffs, constables, clerks, and justices of the peace, shall be entitled to the same fees for services performed in relation to any arbitration or reference, as shall be allowed by law, for the like services in their respective courts.

Costs.

Witnesses and officers.

[*Approved, February* 19, 1825.]

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ASSAULT AND BATTERY.

AN ACT to allow Justices of the Peace jurisdiction in cases of breaches of the peace, upon certain conditions.

19 Feb. 1825.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That if any person shall be guilty of an affray, or shall unlawfully assault or threaten another in a menacing manner, or shall strike another in the presence of any justice of the peace, or if knowledge of any such affray or breach of the peace shall come to any justice of the peace, during the continuance thereof, or before the parties shall have dispersed and retired peaceably to their homes, it shall be the duty of the said justice to call to his aid the sheriff or any constable of the county where the said breach of the peace shall have been committed, or any other person or persons, taking with him the power of the county, if necessary, and to arrest the offender or offenders without the aid or necessity of any written warrant or process. And the said justice may, upon his own knowledge, commit such offender or offenders for trial in the manner herein directed; or if he shall not be cognizant of the facts attending such breach of the peace, he shall inquire into the same by witnesses, and if from the examination it shall appear to him that any ought to be put upon their trial, he shall commit or recognize them for trial as aforesaid.

Persons guilty of assault, &c. may be arrested.

Justice may call aid.

Offenders to be committed, or enter into recognizance.

SEC. 2. *Be it further enacted*, That the recognizance directed to be taken as aforesaid, shall be entered into by the party, with good and sufficient security, conditioned for his appearance before the said justice of the peace, at a certain time and place to be fixed on by the said justice for the trial of the said offence; and the said party shall be kept in custody until such recognizance shall be entered into, or until the time of trial: *Provided, however*, That no

Offender kept in custody until he enter into recognizance.

Not to be put upon his trial in less than 10 days

May have his election to be tried before J. P or the Cir. Ct.

person recognized for any of the said offences, shall be put upon his trial before a justice of the peace in a shorter time than ten days after entering into such recognizance, unless by consent of the defendant: *And provided, also,* That if the party shall elect to be tried before the circuit court, or if the offence with which he is charged shall extend to life or limb, or shall be of so aggravated a nature as in opinion of the justice to merit a greater punishment than can be inflicted under this act, the recognizance, in those cases where bail can be taken, shall be conditioned for his appearance at the next circuit court to be holden in and for the said county, to answer an indictment to be preferred against him for the said affray or assault and battery (as the case may be;) and in default of such recognizance being given, the said party shall be committed to prison as in other like cases.

In trials before J P. jury to be summoned.

Fine not less than $5, nor more than $80

May be discharged from imprisonment after 10 days, on taking oath of insolvent debtor.

Costs.

Sec. 3. *Be it further enacted,* That in those cases where a trial shall be had before a justice of the peace, the said justice shall direct the sheriff or constable of the county to summon a jury of twelve good and lawful men for the trial of the said cause; and if the said jury shall find the defendant guilty, they shall proceed to assess a fine upon him according to the nature and aggravation of his offence, which shall not be less than five nor exceeding eighty dollars; and the said justice shall enter judgment upon such verdict, that the said party shall pay the fine assessed by the said jury, together with the costs of prosecution, and that he shall stand committed until the fine and costs be paid: *Provided, however,* That if the party, after having been imprisoned ten days, will take the oath required by the act concerning insolvent debtors, and will in all respects comply with the requisitions of the said act, he may be discharged from imprisonment as other insolvent debtors are; and in all cases where the party shall be discharged in the manner aforesaid, the costs shall be paid by the county as other county expenses,—and the said county shall be considered as a creditor of the said insolvent to the amount of the fine and costs, and so far as the costs extend shall be considered as a privileged creditor, and be entitled to receive the full amount thereof before any other debt shall be paid. And if any person shall obtain his discharge under this proviso by wilful false swearing, he shall be deemed guilty of perjury, and punished accordingly.

On complaint to J P. of assault, affray, warrant to be issued.

Sec. 4. *Be it further enacted,* That upon complaint made upon oath or affirmation, before any justice of the peace of the proper county, against any person for an assault and battery, affray, or other breach of the peace, it shall be the duty of the said justice of the peace forthwith to issue his warrant against the person complained of; and if upon his being brought before the said justice, it shall appear upon examination that the said party ought to be put upon his trial, the same proceedings shall be thereupon had as is herein before directed in like cases. The complainant shall be considered as a prosecutor, and shall be liable for the costs where the defendant shall be discharged or acquitted, and judgment may be entered against him for the same in the court where the discharge or acquittal shall take place.

No trial before J P on complaint of deft. or third person, except, &c.

SEC. 5. *Be it further enacted*, That no trial shall be had before a justice of the peace, under this act, upon the information or complaint of the defendant himself, or upon the information or complaint of any third person, unless the injured party shall be present at the trial and examined as a witness, or was duly summoned as a witness, or was at the time a non-resident of the county.

Defendant, on conviction, may appeal.

Giving recognizance.

SEC. 6. *Be it further enacted*, That any person who may be convicted before a justice of the peace, under the provisions of this act, shall have the privilege of appealing from the judgment of the justice to the next circuit court, upon his entering into a recognizance in such sum as shall be directed by the said justice, with good and sufficient surety, conditioned for his appearance in the said circuit court, to answer the said complaint, and for the costs which shall have accrued in the court below, and which may accrue in the said appeal. And it shall be the duty of the said justice, when any appeal is so taken, to certify his proceedings to the next circuit court, and to recognize the witnesses in the case to appear at the said court under the penalty of sixty dollars.

Duty of J. P. on appeal.

Penalty on officers for neglect of duty.

SEC. 7. *Be it further enacted*, That if any justice of the peace, sheriff, or constable, shall wilfully neglect or refuse promptly to perform his duty under this act, he shall for every default pay the sum of fifty dollars, to be recovered by indictment to the use of county, or by action of debt in any court having cognizance thereof, by any person who shall sue for the same, to the use of the person suing.

Fees allowed officers as in other cases.

SEC. 8. *Be it further enacted*, That sheriffs and constables shall be entitled to the same fees for services rendered under this act, as are or shall be allowed by law to constables for similar services; justices of the peace, jurors, and witnesses, shall respectively be allowed the same fees for services under this act, which they are or shall be entitled to in similar services under the act for the collection of small debts.

J. P. to certify amount of fines to county court

SEC. 9. *Be it further enacted*, That it shall be the duty of all justices of the peace, before whom any fine may be imposed to certify the amount of such fine, as well as the name of the constable to whom the same is payable, to the treasurer of the proper county, who shall thereupon charge the same to such constable. And upon default of any constable to pay over the amount of the same, thus certified, at least fifteen days before the next term of the county court, it shall be the duty of the clerk to issue a summons, requiring him to appear at the next term of the county court, and show cause, if aught he has, why judgment shall not go against him for such default; and upon the service of such summons (three days at least before such term) the court, if no good cause to the contrary is shown, shall enter up judgment against such defaulter for the whole amount of the sum which may appear to be due, after making proper allowances for such delinquencies as may happen under the proviso to the third section of this act, and twenty per centum thereon to be recovered by execution and applied to county purposes.

Proceedings against constable failing to pay over fines.

Fines appropriated.

SEC. 10. *Be it further enacted*, That all fines and forfeitures accruing under this act, unless otherwise directed, shall be paid into the treasury, and go towards lessening the county levy. And nothing herein contained shall be construed to prevent grand juries from presenting any person guilty of any offence against the public peace, unless such person may have been punished therefor, under the provisions of this act, in such manner as to bar any further proceedings for the said offence.

Grand juries not precluded from presenting offences.

J. P. may punish for contempt.

SEC. 11. *Be it further enacted*, That justices of the peace, sitting as a court in the discharge of any of the duties assigned them by law, shall have power to punish contempt, committed in his presence, by fine and imprisonment: *Provided*, Such fine shall not exceed ten dollars, and such imprisonment shall not be longer than twenty-four hours, unless such person so imprisoned refuse or neglect to pay such fine, in which case the justice may, if he think proper, order such person to remain in prison until such fine, with the costs and charges, be paid.

Not exceeding $10 fine, and 24 hours imprisonment.

Repeal of other acts.

SEC. 12. *And be it further enacted*, That all laws and parts of laws coming within the purview of this act, shall be and the same are hereby repealed.

This act to take effect and be in force from and after the passage thereof.

[*Approved, February 19th,* 1825.]

ASSIGNMENTS.

AN ACT concerning Assigned Bonds, Bills, and Promissory Notes.

11 Feb.1825.

Bonds, bills and promissory notes assignable.

Assignee may sue in his own name.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That all bonds, bills and promissory notes for money or property, shall be assignable, and the assignee may sue for them in the same manner as the original holder thereof could do; and it shall and may be lawful for the person to whom the said bonds, bills or notes are assigned, made over and endorsed, in his own name to commence and prosecute his action at law for the recovery of the money or property mentioned in such bonds, bills or notes, or so much thereof as shall appear to be due at the time of such assignment, in like manner as the person to whom the same was made payable might or could have done. And it shall not be in the power of the assignor, after assignment made as aforesaid, to release any part of the debt or sum really due by the said bonds, bills or notes: *Provided,* Nothing in this section shall be so construed as to change the nature of the defence in law that any defendant may have against the assignee or original assignor; but the said defendant may make the same defence against any such bond, bill or note, in the hands of the assignee, that he could have done if the said bond, bill or note had remained in the hands of the person who was the holder thereof when the defence accrued and was sued in his name. And all just set-offs or discounts on any such bond, bill or note, in favor of the defendant, against the plaintiff or against any assignor before the assignment, shall be allowed to the defendant, unless it shall be expressed in the said bond, bill or note that the sum therein mentioned shall be paid without defalcation or discount. And, further, no assignee shall ever obtain any greater title to or interest in any bond, bill or note, than the person had from whom he acquired it.

Notice of defence not to be changed.

How assignor may be liable.

SEC. 2. *Be it further enacted,* That no assignor of any bond, bill, or promissory note, for the payment of money or property, shall hereafter be liable to the action of the assignor of any such bond, bill, or promissory note, unless such assignee shall have used due diligence by the institution and prosecution of a suit at law against the maker of such bond, bill, or promissory note, for the recovery of the money or property due thereon, or damages in lieu thereof: *Provided, nevertheless,* That if it shall appear to the satisfaction of the court or jury that the institution of such suit would have been unavailing, such assignee may recover against the assignor or assignors, as if this act never had passed.

Proviso.

SEC. 3. *Be it further enacted*, That this act shall not be so construed as to affect any suit now pending, or in any respect to alter or change the existing laws respecting bills of exchange.

SEC. 4. *Be it further enacted*, That the fifty-third section of an act establishing courts of justice and regulating judicial proceedings, passed by the governor and judges the third day of July, eighteen hundred and seven, be and the same is hereby repealed.

This act shall commence and be in force from and after the passage thereof.

[*Approved February* 11*th*, 1825.]

ATTACHMENTS.

1st August, 1825.

AN ACT to provide a method of proceeding against absent and absconding debtors.

Attachment how obtained.

Declaration and affidavit to be filed.

SEC. 1. *Be it enacted by the general assembly of the state of Missouri*, That in all cases where any creditor or creditors shall file or cause to be filed, in the office of the clerk of the circuit court of any county in this state, a declaration or other statement, in writing, against his, her or their debtor; containing a true statement of the nature of his, her or their demand, together with an affidavit, on his, her or their oath or affirmation, or on the oath or affirmation of any other creditable person for him, her or them, stating that the defendant in the declaration mentioned, is justly indebted to such plaintiff or plaintiffs, in a sum exceeding the sum of fifty dollars, (which sum shall be specified in such affidavit) and that the said affiant verily believes that such defendant is not a resident of, or residing within this state, or that he has so absented himself, or absconded from his usual place of abode, or concealed or confined himself, that the ordinary process of law cannot be served on him, or that he is about to remove his effects out of this state, it shall be lawful for such plaintiff or plaintiffs, to sue, or cause to be sued, out of the office of said clerk, a writ of attachment, directed to the sheriff of the proper county, returnable as other writs to the circuit court for said county, commanding him to attach the said defendant, by all and singular, his lands and tenements, goods, chattels, moneys, credits, and effects, or so much thereof as shall be sufficient to secure the debt so sworn to, with interest and costs of suit, in whose hands or possession soever the same may be found, in his bailiwick, that he, the said defendant, be and appear at the next term of the said court, before the judge thereof, on the first day of the said term, to answer the

Writ.

plaintiff's demand; and also that the said sheriff summon all and every person in whose hands or possession any such lands, tenements, goods, chattels, moneys, credits, or effects, shall or may be found, and particularly every such person as shall be named in the said writ by the request of the said plaintiff, that he or they be and appear on the first day of the term of the circuit court to which said writ is made returnable, before the judge thereof, then and there to answer what may be objected against him, her or them.

Capias may issue against garnishee on affidavit.

SEC. 2. *Be it further enacted*, That if any such plaintiff shall, in addition to the affidavit required by the first section of this act, file, or cause to be filed, in the said clerk's office, an affidavit, on his or her oath or affirmation, or on the oath or affirmation of some other creditable person, stating that he verily believes that any person in the said county hath any goods, chattels, moneys or effects, belonging to the said defendant, in his or her hands or possession, or under his or her care, (stating the value thereof) or is indebted to the said defendant, in any sum of money, although the same shall not be then due, and shall also, in manner aforesaid, state that he has just cause to fear that the person so having any goods, chattels, moneys, or effects, in his or her hands, or possession or care, or who is so indebted to the said defendant, is about to leave this state, it shall and may be lawful for the said plaintiff to cause to be inserted in such writ of attachment a clause of capias against such person as aforesaid.

Writ how to be executed.

SEC. 3. *Be it further enacted*, That the manner of attaching the lands, tenements, goods, chattels, moneys, credits and effects, of such defendant, shall be by the officer's going to the place where, or to the person in whose hands or possession the same are supposed to be, or the person who is supposed to be indebted to the said defendant, and then and there, in the presence of one or more creditable persons of the neighborhood, declaring that he attached the same; from and after which time, the property, moneys, credits, or other effects, so attached, shall remain in the officer's power, and be by him secured, to abide the judgment of the court, unless the person or persons in whose hands or possession the same may be found, shall enter into bond to the sheriff or his assigns, with sufficient security in double the value of the property so attached, conditioned that the same shall be forthcoming when and where the court shall award, and shall abide the judgment of the court; and the manner of summoning the person in whose hands or possession any such lands, tenements, goods, chattels, moneys, credits, or effects, may be attached, shall be

Property to be secured.

Garnishee giving bond, property discharged.

Service of summons on garnishee.

by reading the said a writ, or delivering a copy thereof to him, or leaving such copy at his usual place of abode, with some person of his or her family, above the age of fifteen years, and informing such person of the contents thereof. And the manner of executing such clause of capias shall be by taking the body of the person therein commanded to be taken, and committing him to the common jail of the county, unless he shall enter into bond with sufficient sureties, in the sum to be endorsed on such writ by the clerk, before issuing the same; conditioned that such person so arrested shall appear at the term of the court to which the writ is returnable, to answer what may be objected against him, and that if judgment shall be given against him, at that or any subsequent term, he will pay the condemnation money and costs, or surrender himself in execution, or that the sureties will do the same for him; and the sheriff or other officer shall return the said writ, together with all and every bond taken by virtue of this section, and a schedule of the property attached, with the names of the persons in whose presence the writ is executed, into the office of the clerk of the court from which the said writ issued, on the return day thereof.

Capias.

Bond on capias.

Return of the writ, how made.

Sec. 4. *Be it further enacted*, That if the said sheriff shall fail to return a bond, in any case where the same is required by the third section of this act, or such bond returned shall be deemed insufficient by the plaintiff, for want of sufficient security or other cause, such plaintiff may cause a rule to be entered, at any time during the three first days of the return term of such writ, requiring the said sheriff to perfect the same on any day during the said term, in the rule named, not being less than three days after entering such rule; and if such bond shall be adjudged insufficient, and the said sheriff shall fail to perfect the same on or before the day named in the rule, the said plaintiff may cause a rule to be entered against said sheriff, requiring him to file a bond, with sufficient security, on or before the third day of the next succeeding term, or shew cause why judgment should not be entered against him, for the amount of the plaintiff's demand, with costs of suit.

Sheriff failing to return bond, or returning insufficient, bond.

Shall be ruled to perfect bond, or judgt. be entered against him.

Sec. 5. *Be it further enacted*, That if the said defendant shall not appear by himself or attorney, and file special bail to the plaintiff's action, on or before the third day of the term to which such writ shall be returnable, the court shall make an order that a publication (containing a statement of the nature and amount of the plaintiff's demand, and notifying the said defendant that an attachment has been issued against his estate, and that unless he shall appear by himself or attorney and file special bail to the

Defendant not appearing, order of publication to be made.

said action, on or before the third day of the next succeeding term, a judgment will be entered against him, and his estate sold to satisfy the same) shall be inserted for four weeks successively, in some newspaper printed in this state, within such time as the said court shall appoint; and it shall be the duty of the said plaintiff to cause the same to be inserted accordingly; and the expenses thereof, if allowed by the court, may be recovered as other costs.

How published.

Sec. 6. *Be it further enacted*, That if any such writ of attachment shall be served as aforesaid, it shall and may be lawful for any such plaintiff, at any time during the return term of of the said court, to prepare, exhibit, and file, all and singular such allegations and interrogatories, in writing, upon which he or she shall be desirous to obtain, and compel the answer of any and every garnishee, touching the lands, tenements, goods, chattels, moneys, credits, and effects, of the said defendant, and the value thereof, in his, her or their possession, custody or charge, or from him or her or them due and owing to the said defendant, at the time of the service of the said writ, or at any time after, or which shall or may thereafter become due; and it shall be the duty of each and every such garnishee, to exhibit and file, under his oath or affirmation, on or before the third day of the next succeeding term, full, direct and true answers, to all and singular the allegations and interrogatories by the said plaintiff supported, exhibited and filed, in the manner herein before directed and described.

Plaintiff may exhibit allegations and interrogatories to garnishee.

Who shall answer on oath.

Sec. 7. *Be it further enacted*, That if the said defendant shall appear, at any time before the fourth day of the second term after any such writ shall have been issued as aforesaid, and file special bail to the plaintiff's action, or if the affidavit upon which such writ issued shall be adjudged insufficient, then on the common appearance of such defendant, within the time aforesaid, all and every such garnishee shall be discharged, and any bond by him given cancelled, the attachment dissolved, the property taken thereon restored, and all rules entered against the sheriff, as aforesaid, discharged, and the cause proceed as in other cases, and the costs of all proceedings against the garnishee or sheriff, as aforesaid, shall abide the event of such suit as other costs; but if the said defendant shall not appear, as aforesaid, within the time aforesaid, it shall be lawful for such plaintiff to cause such default to be entered, as in other cases; and if the demand of the plaintiff is liquidated and reduced to writing, the court may cause the clerk to calculate the principal and interest really due, and enter judgment therefor accordingly; and if such demand be unliquidated, the court, or if a jury be required, the jury,

Deft. appearing and giving bail, attachment dissolved.

Affidavit, insufficient, common appearance accepted.

Costs, as against garnishee.

Deft. failing to appear, judgt. and proceedings as on default.

shall assess the amount due, and judgment shall be entered therefor as in other cases: *Provided, however*, That when the judgment shall be taken without the appearance of the defendant, it shall bind only on the property attached, and execution upon such judgment shall not issue against any other property of the defendant, nor against his body; nor shall such judgment be any evidence of debt against the defendant, in any subsequent suit for the same demand; but the plaintiff shall be bound to declare upon and prove the original cause of action, the same as if judgment had never been rendered.

Effect of judgment.

Deft. may give special bail in vacation, and effect thereof.

SEC. 8. *Be it further enacted*, That it shall be lawful for the defendant to put in special bail in vacation, before the clerk or judge of the court in which the action is pending, which shall have the same effect as if put in in term time: *Provided, however*, That the attachment shall not be considered as dissolved, until the recognizance of bail shall have been filed in the office of the clerk of the said court, and an order entered by the clerk in his minutes for the dissolution of the attachment and the restoration of the property attached; nor shall the sheriff or other officer be bound to surrender such property, until served with a certified copy of the said order under the seal of the court.

Plff denying the answer of garnishee

SEC. 9. *Be it further enacted*, That if the garnishee shall file his answer as herein before required, and the plaintiff shall deny the truth or any part thereof, or shall allege that the garnishee has not discovered the true amount of the debt due by him to the defendant, or what goods, chattels, moneys or effects are in his possession belonging to the defendant, or the value thereof, the court shall (if a jury be required) immediately after the judgment is entered against the defendant as aforesaid, without the formality of pleading, direct a jury to be empanneled, unless good cause be shown by either party for a continuance; and such jury, or if neither party require a jury, the court shall thereupon inquire what is the true amount due from such garnishee to the defendant, and what goods and chattels, moneys or effects are in his possession belonging to the defendant, and the value of each article of such goods, chattels and effects; and if the finding be against such garnishee, the court shall grant judgment against him in favor of the plaintiff for the whole amount of the debts found to be due from him to the defendant, and the moneys and value of the goods and chattels, and effects found or acknowledged to be in his possession belonging to the defendant, with the costs of such inquiry; and if the finding be in favor of the garnishee, he shall recover his costs against the plaintiff, and the judgment shall only be entered against

Court or jury to decide.

Effect of finding agt garnishee.

In favor of garnishee.

him for the amount of debts due from him to the defendant, the moneys and the value of the goods, chattels and effects, as discovered by his answer,—and the court shall award execution thereof accordingly: *Provided*, That if any garnishee shall deliver to the sheriff the goods, chattels and effects, so found or confessed to be in his possession, belonging to the defendant, or any part thereof, the same shall be received in discharge of so much of the said judgment as the same shall amount to, according to the value thereof, ascertained as aforesaid; and if it shall appear that any such garnishee's debt to such defendant is not then due, execution shall be stayed against him for so much, until six ninths of the same shall become due.

Garnishee may discharge himself by delivery of goods, &c.

Execution for debt not due, may be stayed.

Sec. 10. *Be it further enacted*, That whenever the goods, chattels, credits or effects taken by virtue of any attachment shall be claimed by any person other than such debtor, the court shall permit such claimant to interplead. And such court, or if either party require a jury, the jury shall immediately (unless good cause be shown for a continuance) inquire into and determine the right of property; and if the said court or jury find for the plaintiff in the attachment, he shall recover his costs against the claimant; and if they finding for the claimant, he shall be entitled to his costs: *Provided*, That the finding for such claimant shall not affect the right of the defendant to such goods, chattels, credits or effects.

Persons claiming property attached, may interplead.

How determined.

Costs.

Sec. 11. *Be it further enacted*, That if any garnishee shall have neglected or refuse to exhibit and file his answer, within the time herein before prescribed, to the allegations and interrogatories prepared, exhibited and filed by any plaintiff as aforesaid, it shall and may be lawful for such court, after judgment entered against the defendant as aforesaid, to enter judgment in favor of the plaintiff against such garnishee for the amount of the plaintiff's debt, ascertained as aforesaid, together with the damages and costs of suit.

Garnishee failing to enforce.

Judgment.

Sec. 12. *Be it further enacted*, That if a rule shall have been entered against any sheriff (as by the fourth section of this act is prescribed) and he shall have failed, neglected or refused to file a bond with sufficient security, or show cause as thereby required, such rule shall be made absolute, and judgment may be entered against such sheriff in favor of the plaintiff for the amount of his demand, ascertained as aforesaid, with the damages and costs of suit; but executions shall be stayed until the return of the execution against the garnishees and defendant.

Sheriff, failing to perfect bond, judgment to be rendered against him.

Sec. 13. *Be it further enacted*, That no execution shall be awarded against any such garnishee or the defendant,

No execution to be award-

ed until plff. give bond.

or any of his goods, chattels or effects sold, unless the plaintiff shall enter into a bond to the defendant, with sufficient security, in double the amount of his judgment, to be approved of by the court, conditioned that if the defendant in such attachment shall, within three years next following, by himself or attorney, appear in such court and disprove or avoid the debts or damages recovered against him, or any part thereof, he the said plaintiff will pay unto the said defendant all such sum or sums of money as shall appear to have been recovered by, and not justly due and owing to him, together with such damages as shall be assessed by a jury: *Provided always*, That where any goods, chattels, or effects of a perishable nature, or live stock, shall be attached as aforesaid, it shall and may be lawful for the court to order the same to be sold by the sheriff at auction, ten days previous notice thereof being given by at least six advertisements stuck up in the most public places in the county; and the said sheriff shall detain the proceeds thereof, subject to the order of the court, until final judgment and execution.

Perishable property may be sold, when.

Execution how to be levied.

SEC. 14. *Be it further enacted*, That the execution against the defendant shall be levied on the lands, tenements, goods, chattels and effects in the possession, custody or charge of such sheriff by virtue of the said writ, and such as may be delivered to him by any garnishee as aforesaid; and the execution against the garnishee, or so much thereof as shall not be discharged by delivery of goods, chattels or effects of the defendant by virtue of the ninth section of this act, shall be levied as other executions. And the sheriff shall make sales of the property levied upon by virtue of the said executions as in other cases, except, he shall sell the property of the defendant first, and if the proceeds thereof shall be sufficient to satisfy the debts, and damages, and all the costs, the execution against the garnishee shall be returned and discharged as satisfied; but if such proceeds shall not be sufficient, the sheriff shall sell so much of the property of the garnishee as will satisfy the execution against him, or if the whole amount thereof shall not be necessary to satisfy the judgment against the defendant, then so much only as will pay that part remaining unsatisfied; and satisfaction of the execution against the defendant, and payment of costs on the others, shall be a satisfaction for the whole: *Provided always*, That not more of the property attached shall be sold than shall be necessary to satisfy the debt, damages and all costs, except when the property sold cannot be divided, and in such cases the sheriff shall be entitled to commission only on the amount of judgment; and the overplus, if any, shall in all cases be paid to the person entitled to the same, as the court shall direct.

In what case execution may be issued against the sheriff.

SEC. 15. *Be it further enacted*, That in all cases where judgment shall be entered up against any sheriff as aforesaid, and he shall fail to levy the moneys due on any execution against a garnishee or the defendant, and pay the same over to the person entitled thereto, or bring it into court at the return term of such execution, it shall be lawful for such plaintiff to sue out execution on such judgment against such sheriff; and if the sheriff shall pay over or bring into court part of the money aforesaid, a discharge shall be entered of the judgment against him, for so much as he shall so pay over or bring into court; but if he bring into court or pay over the whole of the money due on any such executions, the judgment against him shall be discharged on payment of costs. And if no such judgment shall be entered against such sheriff as aforesaid, and he shall fail duly to return any such execution, or shall make a false return thereof, or shall return the same or any part thereof satisfied and shall neglect to pay the money so levied thereon, the court, on motion of the plaintiff or his attorney, or other person aggrieved, (three days previous notice being given to the sheriff) shall enter judgment against him for the sum returned levied, or for the whole amount of the execution, in case of no return or false return, and award execution against him, which the coroner shall levy and return, and pay the proceeds thereof to the plaintiff, within fifteen days after the delivery thereof to him, under the same penalties as are herein prescribed against the sheriff.

Remedy of shff. against defendant.

SEC. 16. *Be it further enacted*, That if the judgment of the plaintiff, or any part thereof, shall be paid or satisfied by any such sheriff, he shall have the same remedy against the defendant for the amount so paid by him, as is now provided by law for bail against their principal, where a judgment is paid or satisfied by them; and the sheriff shall have the same remedy on any bond of a garnishee, which shall be adjudged insufficient, as is now provided on bail bonds in like cases; and where any bond given by any garnishee is accepted by the plaintiff or plaintiffs, the sheriff may assign the same to him, her or them,—and it shall be lawful for such plaintiffs to sue thereon in his, her or their name, in case of a breach of the condition.

Appeal and writs of error allowed.

SEC. 17. *Be it further enacted*, That the defendant in the attachment, the garnishee and sheriff, or either of them, who may feel aggrieved by the judgment of the court, may prosecute writs of error and take appeals as in other cases; and any garnishee or garnishees shall be allowed, out of

Compensation to garnishee

effects of the defendant so attached, a reasonable compensation for his, her or their attendance.

Attachment may be issued by J. P. on affidavit.

SEC. 18. *Be it further enacted,* That if any person shall file or cause to be filed, before any judge or justice of the peace, in any county in this state, an affidavit, as in the first section of this act is provided, and the debt so sworn to shall not exceed the sum of ninety dollars, nor be less than five dollars, it shall be lawful for such justice to issue a writ of attachment, directed to the constable of his township, commanding him to attach such defendant, by all and singular his goods, chattels, moneys, credits, and effects, or so much thereof as shall be sufficient to secure the debt so sworn to, with interest and costs of suit, in whose hands or possession soever the same may be found, in his township, so that the defendant be and appear before such justice at the return day of such writ, and also that the said constable summon all and every person in whose hands or possession any goods, chattels, moneys, credits or effects of the defendant may be found, and particularly any person who may be named in the writ as garnishee; that he be and appear before such justice, on the return day of such writ, to answer what may be there objected against him; which writ shall be returnable on some day therein named, not less than thirty days from the date thereof.

How directed, and form of writ.

Clause of capias against garnishee, on affidavit.

SEC. 19. *Be it further enacted,* That if such plaintiff shall, in addition to the affidavit required by the preceding section, file or cause to be filed, an affidavit, stating that he verily believes that any person in the said township has in his possession, custody, or charge, any moneys, goods, chattels, or effects, and the value thereof, belonging to the defendant, or is indebted to the defendant in any sum of money, although the same may not be then due, and that he verily believes that such person is about to leave this state, such justice may insert a clause of capias in such writ against such person, commanding such constable to take such person, and have him forthwith before such justice.

Writ, how executed.

SEC. 20. *Be it further enacted,* That the writ issued by such justice as aforesaid, shall be executed on the property of the defendant, in the same manner as is required by the third section of this act, and the garnishee shall be summoned to appear before the justice on the return day of such writ, as by the writ commanded; and the execution of the clause of capias, shall be by arresting such garnishee and bringing him forthwith before the justice, who shall thereupon examine witnesses, for and against the garnishee, as to the facts sworn to by the plaintiff, or he

Garnishee summoned or arrested, may be examined.

may examine the garnishee on oath touching the same; and if the justice be well satisfied, on such proof or examination, that such garnishee has in his hands or possession any moneys, goods, chattels or effects belonging to the defendant, or is indebted to the defendant, as aforesaid, and is about to leave the state, and if such garnishee shall refuse to deliver the said goods, chattels, moneys or effects, to the constable, or pay the money due to the defendant, as the justice shall direct, such justice shall cause such garnishee to enter into bond to the plaintiff, with sufficient security in double the amount of property adjudged to be in his hands as aforesaid, to be approved of by the justice, conditioned that he will appear before such justice on the return day of such attachment, to answer what may be objected against him, and abide the final judgment of the justice, and on failure or refusal to enter into bond, the justice may commit such defendant to the common jail of the county, to secure his appearance, but if the justice shall not be well satisfied on such proof or examination of the facts aforesaid, he shall enter a judgment in favor of such garnishee, for a sum not exceeding ten dollars, and the costs of the capias and examination thereon, and shall issue execution against the plaintiff for the amount of said judgment, and the cause immediately shall proceed, in the same manner as if such garnishee had been summoned in the first instance.

Garnishee to give bond, when.

Proceedings on refusal of garnishee to give bond.

SEC. 21. *Be it further enacted*, That if the surety taken by any constable in a garnishee's bond for the delivery of property as aforesaid, shall be adjudged insufficient by the justice, on the return day of the writ, and if the constable shall fail to perfect the same within twenty days thereafter, he shall be made a co-defendant in the attachment, and proceedings had accordingly.

Bond taken by constable insufficient, he shall be made co defendant.

SEC. 22. *Be it further enacted*, That if the defendant shall appear before such justice on or before the return day of the writ, and file special bail to the action, the garnishee shall be discharged, the attachment dissolved, the property restored, and proceedings against the constable set aside, and the cause shall proceed as in other cases; but if the defendant does not appear and file special bail as aforesaid, the justice, on the return day of such writ, shall set a day for trial, which shall not be less than three months thereafter, and make an order that the plaintiff cause advertisements to be set up at six of the most public places of the township, at least sixty days before the trial day, which advertisements shall contain a notice of the proceedings had against the defendant, and shall require him to appear before such justice and enter special bail to the plaintiff's

Defendant appearing, attachment dissolved.

Default.

action, on or before the day set for trial as aforesaid, or judgment will be entered against him.

Defendant appearing after advertisement.

Sec. 23. *Be it further enacted*, That if the defendant shall appear before such justice, and enter special bail to the action, on or before the day set for trial, as aforesaid, the garnishee shall be discharged, the attachment dissolved, the property restored, and all proceedings against the constable set aside, and the cause proceed as in other cases; but if such defendant shall not appear and file special bail as aforesaid, on due proof of the advertisements having been put up as required by the preceding section, the justice shall and may proceed to give judgment by default for the amount which may appear to be due to the plaintiff, where his demand is liquidated and reduced to writing; and if such demand shall be unliquidated, such justice shall examine witnesses to substantiate the same, as in other cases, and the plaintiff shall recover no more than he shall prove to be due from the defendant; and the justice shall enter judgment therefor accordingly: *Provided*, That such justice shall have the same power to set aside such judgment by default, as in other cases.

Failing to appear, judgment by default.

Justice to examine garnishee.

Sec. 24. *Be it further enacted*, That if the garnishee appear on the day of trial, the justice, if thereto required by the plaintiff, shall examine such garnishee, touching any goods, chattels, moneys, or effects, and the value thereof, in his hands or possession, belonging to the defendant, and the debts due by him to the defendant; and it shall be the duty of such garnishee, to make full, true, and perfect answers thereto; and if the plaintiff shall allege that the garnishee has not made a true discovery of the property of the defendant in his possession, custody, or charge, or the value thereof, or the debts due by him to the defendant, the justice, or if either party require a jury, the jury, shall immediately enquire what is the true amount due from such garnishee to the defendant, or what goods, chattels, and effects, are in his hands or possession, and the value thereof; and if the finding be in favor of the garnishee, he shall recover his costs, and the justice shall enter judgment for the amount confessed by him; but if it be found against such garnishee, judgment shall be entered against him for the whole amount confessed, together with the amount of property, moneys, and debts, found to be in his hands as aforesaid: *Provided*, That if the garnishee shall deliver the property so found or confessed to be in his possession, or any part thereof, the same shall be received in discharge of so much of said judgment as the same shall amount to, according to the value thereof, ascertained as aforesaid, and if it shall appear that any such debt of such

Plaintiff may compel garnishee to answer fully.

Issues how tried.

Judgment.

Stay of execution

where debt is not due.

garnishee to such defendant is not then due, execution shall be stayed against him for the amount thereof, until such time after the same shall become due, as any defendant would have been entitled to a stay of execution and judgment for the same amount in ordinary cases.

Garnishee failing to appear.

Sec. 25. *Be it further enacted*, That if any such garnishee, being summoned as aforesaid, shall neglect to appear on the trial day, or appearing shall refuse to answer on any such examination, the justice may enter judgment against such garnishee, in favor of the plaintiff, for the full amount of the plaintiff's demand, ascertained as aforesaid, with costs.

Claim of property in a third person, how tried.

Sec. 26. *Be it further enacted*, That whenever the goods, chattels, or effects, seized on any attachment issued by a justice of the peace as aforesaid, shall be claimed by any person other than the defendant, such justice shall proceed to try the right, as is provided in this act, in like cases in the circuit court, and pronounce judgment thereon accordingly.

Execution in what cases to issue.

Sec. 27. *Be it further enacted*, That no execution shall be issued against the defendant, unless the plaintiff shall enter into bond as required by the twelfth section of this act; and the said executions shall be levied and returned as is provided in the thirteenth section of this act, under the like penalties as are provided in case of the sheriff's returning or failing to return such executions issued by the circuit court; and where the money due the plaintiff has been paid by the constable, in consequence of judgment being entered against him, as aforesaid, he shall have the like remedy against the defendant, as bail against their principal; and the bond of the garnishee, taken by the constable as aforesaid, may be sued on by him, or assigned to and sued on by the plaintiff, in the same manner as in the case of such bonds taken by the sheriff.

Return penalties.

Constable's remedy.

Appeal and certiorari.

Sec. 28. *Be it further enacted*, That the defendant in the attachment issued by the justice as aforesaid, and the garnishee, shall have the same right to prosecute a *certiorari* or appeal, as in other cases.

Repeal.

Sec. 29. *Be it further enacted*, That the third section of an act further to regulate judicial proceedings, and to abolish imprisonment for debt in certain cases, approved twenty eighth June, eighteen hundred and twenty-one, be and the same is hereby repealed.

Repeal.

Sec. 30. *Be it further enacted*, That an act entitled "an act directing the method of proceeding against absent and absconding debtors," passed by the governor and judges of Louisiana, on the fourth day of July, in the year of our Lord one thousand eight hundred and seven, be and the same is hereby repealed. This act shall take effect and be in force from and after the first day of August next.

[*Approved, February* 6, 1825.]

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ATTORNEY-GENERAL and CIRCUIT ATTORNIES.

9th December, 1824.

AN ACT relating to the Attorney-General and Circuit Attornies.

Attorney general, residence and duty.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That the attorney-general shall reside and keep his office at the seat of government. And it shall be his duty to commence and prosecute all actions, suits, process and prosecutions, civil and criminal, in which the state or any county may be concerned; and to defend all actions brought against the state; and to prosecute forfeited recognizances, and all suits and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state, or any county within the circuit in which the seat of government may be; and when called upon by the governor, shall aid any circuit attorney in the discharge of his duties. He shall, when required, give his opinion and advice in writing, without fee or reward, to the general assembly or either branch upon any question of law, and to the governor or other person exercising the government of this state, the secretary of state, auditor of public accounts, state treasurer, and any of the circuit attornies, upon any question of law relating to the duties of their respective offices, which may be submitted to him by them, or either of them. He shall also give his opinion, without fee or reward, to any county court, or justice thereof, or any tribunal established for the transaction of county business, or any member thereof, and to any justice of the peace within his circuit, when required so to do upon any question of law relating to any criminal or other matter in which the state or any county is concerned. And he shall perform such other and further duties as may be enjoined on him by law.*

Circuit attorneys, appointment, qualification, and duties.

SEC. 2. *Be it further enacted,* That the supreme court, or a majority of the judges thereof in vacation, shall appoint in each of the circuits other than that in which the seat of government may be, from time to time, and as often as necessary, a suitable person, learned in the law, as circuit attorney,—who shall be commissioned by the governor, and shall hold his office for the period of four years, unless sooner removed. He shall reside within the circuit for

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*The attorney general is appointed by the governor, by and with the advice and consent of the senate, to continue in office four years—(*Constitution, art.* 5. *sec.* 18.)—may be removed by impeachment, (*Con. art.* 3, *sec.* 29.)

which he is appointed; and it shall be his duty to commence and prosecute all actions, suits, process and prosecutions, civil and criminal, in which the state or any county may be concerned, within his circuit; to defend all suits brought against the state; and prosecute forfeited recognizances, and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or any county within his circuit. And he shall, without fee or reward, give his opinion to any justice of the peace, any county court, or any tribunal established for the transaction of county business, or any justice or member thereof, within his circuit, when required,o n any question of law arising in any criminal case, or other case wherein the state or any county is concerned, pending before such officer, court or tribunal; and shall perform such other duties as may be enjoined on him by law: *Provided*, That nothing herein contained shall be construed to vacate the office of any circuit attorney now in office; but every such circuit attorney shall continue in office during the term for which he was appointed, as if this act had not passed, and shall perform the duties herein required of circuit attornies.

Attorney general, or circuit attorney interested, court to appoint pro tem.

SEC. 3. *Be it further enacted*, That when any attorney-general or circuit attorney shall be interested, or shall have been employed as counsel in any cause or proceeding, civil or criminal, which it is or shall be made his duty to prosecute or defend, the court in which such cause is pending, or to be brought, may appoint some competent person to prosecute or defend such cause. And in all cases where the attorney-general or circuit attorney shall be absent, or sick, and unable to attend to the discharge of his duties, the court in which any of his duties are required to be performed, may appoint some competent person to discharge such duties until the attorney-general or circuit attorney appears and resumes the discharge of his duties; and the persons so appointed shall possess the same powers in relation to such causes and the business in such court, and shall be entitled to such fees therefor as for the time being shall be allowed to the attorney-general and circuit attornies for like services.

Circuit attorneys may be removed for misdemeanor in office.

SEC. 4. *Be it further enacted*, That any circuit attorney may be prosecuted by indictment for any misdemeanor in office, and upon conviction thereof shall be removed from office; and the court before whom he is convicted may, in addition to their judgment of removal from office, in their discretion, fine him in any sum not exceeding one thousand dollars, to the use of the county in which the conviction is had.

Repeal.

SEC. 5. *Be it further enacted*, That all laws and parts of laws, coming within the purview of this act, shall be and the same are hereby repealed.

This act shall take effect and be in force from and after the passage thereof. [*Approved, December 9th*, 1824.]

ATTORNIES AND COUNSELLORS.

AN ACT concerning Attornies and Counsellors at Law.

18th December, 1824.

No person to practice without license.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That no person shall be allowed to practice as an attorney or counsellor at law, or proctor or solicitor in chancery, in any court of record in this state, unless he shall first have obtained a license from the supreme court for that purpose, having taken the oath prescribed by this act, and have been duly enrolled as such attorney or counsellor, or proctor or solicitor: *Provided, however*, That nothing herein contained shall prevent any person from appearing and conducting his or her own cause in proper person; nor shall this section apply to attornies already admitted to practice within this state.

Proviso.

Persons applying for license to be examined.

Sec. 2. *Be it further enacted*, That no person shall be licensed to practice as aforesaid, unless it shall appear upon examination that he is well qualified,—which examination shall be made in term time, by the court, or by examiners appointed by the court, in the presence of one or more of the judges; nor shall any person be admitted to an examination, until he shall have produced satisfactory certificates of good moral character, and also that he has studied law within this state, two years at least, under the direction of some practising attorney or counsellor, or judge of the supreme or circuit court, or has been admitted before in some court of record, in some of the United States or territories, as a practising attorney.

Qualifications.

Oath of attorneys and counsellors.

Sec. 3. *Be it further enacted*, That every person obtaining a license, shall take and subscribe an oath or affirmation in open court, which shall be filed of record in the said court, and a certificate thereof endorsed on the said license, that he will support the constitution of the United States and of the state of Missouri, and that he will demean himself honestly in his practice, and exercise his office to the best of his knowledge and ability.

Rolls to be kept.

Sec. 4. *Be it further enacted*, That the clerks of the several courts of record in this state shall keep a roll of attornies, which roll shall be a record of said court; and no attorney hereafter admitted shall be allowed to practice until he hath subscribed the roll.

Sec. 5. *Be it further enacted*, That if any person shall presume to practice law in any of the courts of record of this state, without having been duly licensed, sworn, and enrolled as above required, he shall, for every offence, be deemed guilty of a contempt of the court where he shall attempt to practice, and shall be punished as in other cases of contempt.

Practising without license, punishable as for contempt.

Sec. 6. *Be it further enacted*, That the supreme court shall have power to strike from the rolls any attorney who shall have been convicted of felony, or guilty of improperly retaining his client's money after demand made by the client for the same, mal-practice in his office, gross ignorance, or neglect of duty, or contempt of court; and any person stricken from the roll of the supreme court shall be prohibited from practising in any other court, the same as if he had never been licensed.

May be stricken from the roll for certain causes, by supreme court.

And prohibited from practising.

Sec. 7. *Be it further enacted*, That the circuit courts shall have power to suspend from practice any attorney guilty of any misconduct which, in the opinion of the court, is such as to justify his being stricken from the rolls. And in case of the suspension of any attorney as aforesaid, the cause of suspension shall be stated in the order for suspension, and the judge shall direct a copy of the said order to be transmitted to the clerk of the supreme court of the district in which the suspension takes place, on or before the first day of the next term of the said supreme court to be holden in that district, at which time the said attorney may appear and show cause against the said order, if any he has; and if he shall fail to appear, or appearing shall fail to show good cause against the said order, the said supreme court shall proceed to make such further order in the case, as the facts set forth in the order for suspension may require. And the facts set forth in the order of the circuit court as the cause of suspension, shall be taken as *prima facie* true, subject to be impeached and disproved by the party accused. If the said attorney shall appear and show good cause against the said order, the said court shall then make an order upon the said circuit court to dissolve the said suspension.

Circuit court may suspend.

Cause of suspension, to be certified to supreme court.

Proceedings.

Sec. 8. *Be it further enacted*, That if any suit shall be dismissed for the non-attendance of any attorney practising in any of the superior or inferior courts, not having a just and reasonable excuse, it shall be at his cost; and he shall moreover be liable for all damages his client may sustain by such dismission, or other neglect of his duty; to be recovered in any court of record within this state.

May be made liable for costs, for neglect of duty.

Sec. 9. *Be it further enacted*, That all laws and parts of laws, coming within the purview of this act, shall be and the same are hereby repealed. This act to take effect and be in force, from and after the passage thereof.

[*Approved, December* 18*th*, 1824.]

AUCTIONS AND AUCTIONEERS.

15th January, 1825.

AN ACT to license Auctioneers, and impose a tax on licenses and sales.

Tax on property sold at auction.

Personal property.

Real estate.

What deemed sales at auction.

Not to extend to sales by process of law.

Nor to sales in cases of bankruptcy insolvency, &c.

By executors and administrators.

Wrecks, &c.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri,* That there shall be levied, collected, and paid, for the use of the state, upon all sales by way of auction, as hereinafter described, which shall be made within this state, the respective rates and duties following, to wit: on all sales of goods, wares and merchandize, or other personal property, the sum of three dollars, and on all sales of real estate, the sum of one dollar and fifty cents, for every hundred dollars of the value or price at which the same shall be sold as aforesaid; and at the same rate for any greater or less sum, except as hereinafter excepted, to be paid by the auctioneer or person making such sales at auction, out of the moneys arising from each and every such sale; and in all cases where the auctioneer or owner of such property so exposed to sale, or any person employed by them, or either of them, shall become the purchaser, the said property shall be subject to the payment of the said duties, as if it had been sold to any other person; and all sales at auction of any part or parcel of any goods, wares, or merchandize, or other property, real or personal, with a design to ascertain and fix a price for the whole or any part thereof, without exposing the whole, or such other part, to public sale, shall be deemed and taken to be sales at auction, within the meaning of this act, to the whole amount of property whereof the sale is so effected by the auctioneer, or by any person or persons acting as a commission merchant, factor or agent, or by the owner or owners thereof: *Provided always,* That nothing in this act contained shall extend to any sale or sales by auction, of any goods, wares, merchandize, or other property, real or personal, made pursuant to, or in execution of, any rule or order, decree, sentence, or judgment of any court or justice of the peace of this state, or any court of the United States, or made in consequence of any bankruptcy, or insolvency, pursuant to any law of this state, or of the United States, in that behalf, or made in consequence of any general assignment of property and effects, by any debtor for the benefit of creditors, or made by virtue of any law of this state, or made by or on behalf of executors or administrators, acting within the limits of their authority as such, or made pursuant to the directions of any law of the United States, or of this state; nor to any sales of any boat, barge, or other vessel, their tackle, apparel and furniture, or the cargoes thereof, or any raft of timber, plank, lumber, or other property, which shall be wrecked, stranded, or found adrift within this state, and sold by authority of law, nor to the sale of any slaves, crops, live stock, farming utensils, household and kitchen furniture, made at the residence of the owner, or to lands on the premises.

Sales made at the residence of the owner.

No person to act as auctioneer without license.

SEC. 2. *Be it further enacted*, That after the first day of February next, no person shall exercise the trade or business of a public auctioneer, by selling any goods, wares, or merchandize, or other property, real or personal, subject to duty as aforesaid, by public auction, unless such person shall have a license, issued pursuant to law, on pain of forfeiting, for every such sale, the sum of five hundred dollars, together with the sums or duties payable by this act upon the property sold.

Penalty.

Clerks of county courts, to issue blank licenses.

SEC. 3. *Be it further enacted*, That it shall be the duty of the clerks of the courts, or tribunals transacting county business, in each county, respectively, to issue, at each term, as many blank auctioneer licenses, for three and six months, respectively, under the seal of the court or tribunal, as the court or tribunal shall direct; which licenses shall be in the form following, to wit:

Form.

STATE OF MISSOURI, } *To all who shall see these presents:*
County of ——, }

KNOW YE, That ——, having on this —— day of ——, in the year of our Lord eighteen hundred and ——, paid to ——, collector within and for the county of ——, the sum of —— dollars, it being the tax imposed on auctioneers for —— months; THEREFORE, the said —— is hereby authorized to exercise the trade and business of auctioneer, by selling goods, wares, merchandize, and other property, real and personal, by auction, within the county aforesaid, for the period of —— months from the date aforesaid.

WITNESS, ——, clerk of the county of ——, this —— day of ——, 182 . A. B. *Clerk.*

Granted, this —— day of ——, 182 . C. D. *Collector.*

Collector to be charged with blanks.

Collector to settle with court.

Balance to be certified.

And the said clerk shall deliver to the collector of the proper county, the blank licenses so issued, and charge him with the amount thereof, in a book to be kept by such clerk for that purpose; and the said court or tribunal, at each and every term thereof, shall settle with the collector for the licenses to him delivered at the preceding term, and shall give him credit for all blank licenses returned; and he shall stand chargeable with all blank licenses which he shall not return. And the said court or tribunal, shall cause their clerk to certify the amount with which the collector stands charged, as aforesaid, as soon as may be, to the auditor of public accounts, who shall charge such collector therewith.

Tax on licenses.

SEC. 4. *Be it further enacted*, That there shall be levied and collected, on every such license granted to any person, the sum of fifty dollars for every three months, to be paid to the collector from whom the same shall be obtained; and it shall be the duty of the several collectors, within their respective counties, upon request of any person desirous thereof, to grant such person a license to exercise the trade or business of auctioneer, for the term in such license specified, and no longer; and such license, upon like request from time to time, may be renewed; but before any such license shall be granted or renewed, the person or persons applying for the same shall pay the tax thereon as aforesaid, and one dollar as a fee to the clerk for issuing the same, and become bound in a bond to the state, with one or more sureties to the satisfaction of the collector, in a sum not exceeding three thousand dollars, and not less than five hundred dollars, at the discretion of the collector, with condition, that he will, on the first Monday of February, May, August, and November, in each year while he shall continue to exercise the trade or business of auctioneer, render to the clerk of the court or tribunal transacting county business, of the proper county, a true and particular account, in writing, of the aggregate amount of moneys or sums for which any property, real or personal, made liable to duty by this act, have been sold, at every sale at auction by him made, or at any private sale made at his auction store or rooms; that is to say, first from the date of such bond until such of the aforesaid days as shall ensue next thereafter, and thenceforth from the day to which an account shall last have been rendered until such of the said days as shall next thereafter ensue, and so in succession from one of the said days to another, so long as he shall continue to exercise his said trade or business; and also shall pay all such sums of money as shall be due to the state upon the said sales, according to the true intent and meaning of this act, to the collector of the proper county; and such bond shall be filed in the office of the clerk of the court or tribunal of the proper county.

Collectors to grant license.

Auctioneers to pay tax & give bond.

Condition.

Auctioneers at private sale.

SEC. 5. *Be it further enacted*, That it shall be lawful for any auctioneer who shall obtain a license and give bond as aforesaid, to sell or retail merchandize at his auction store or room, during the continuance of his license as auctioneer, without a special license as retailer of merchandize; so that he render true accounts of such sales, and pay the like duty and tax thereon, as if such sales were made at auction.

Auctioneers may retain moneys to pay tax on sales.

SEC. 6. *Be it further enacted*, That every person who shall have a license as auctioneer, as aforesaid, continuing in force, shall and may retain, in order to the payment of the duties hereby imposed, all such sum or sums of money as shall be due and payable upon any property by him sold, at auction or private sale, as aforesaid, according to the true intent and meaning of this act; and every such auctioneer, out of the proceeds of the duties which he shall retain and pay as aforesaid, shall be allowed a commission of one per centum upon the amount thereof, for his trouble in and about the same.

Allowance to auctioneer

Auctioneers to render accounts on oath.

Sec. 7. *Be it further enacted*, That the said auctioneers shall render their accounts, required by the condition of their respective bonds, from time to time, to the clerk of the court of the county in which they shall respectively exercise their said trade or business; and every such auctioneer shall make oath or affirmation, according to the best of his knowledge and belief, to the truth of every account which he shall render, before the clerk, who is hereby authorized to administer such oath, in default of which such account shall not be deemed to be duly rendered according to the condition of the bond of such auctioneer; and upon such account being duly rendered, such clerk shall ascertain the amount of duties to be paid by such auctioneer, deducting his commission as aforesaid, and grant him a certificate thereof; and the said auctioneer shall pay the collector of the proper county the amount so ascertained to be due, within twenty days thereafter; and on producing to the said clerk, the receipt of the collector for the said amount of duties, he shall grant him a quietus therefor, and charge the said collector with the amount, and certify the same as soon as may be to the auditor of public accounts, who shall charge such collector with the amount; and it shall be the duty of every collector, when he shall publish a statement of moneys received on licences, to include and specify the sums received under this act on auction licences, and duties on sales.

Clerk to ascertain tax to be paid.

Collector how made accountable.

List of licenses to be published.

Sec. 8. *Be it further enacted*, That if any auctioneer shall neglect or refuse to render his accounts, and pay over to the proper officer all moneys accruing to the state under this act, according to the true intent and meaning of the condition of his bond, and the preceding section, his license shall not thereafter be renewed.

Auctioneer failing to account.

Sec. 9. *Be it further enacted*, That no person shall expose to public auction or vendue, any property, real or personal, subject to duty as aforesaid, as a deputy to any licensed auctioneer, under the penalty of five hundred dollars: *Provided*, That any auctioneer may employ his clerks to hold such auction, he being accountable for their conduct.

No person to act as deputy auctioneer.

Proviso.

Sec. 10. *Be it further enacted*, That if it shall appear to the satisfaction of the clerk of the court or tribunal transacting

Clerk may grant certificate of performance by auctioneer of the condition of his bond.

county business, of the proper county, that any auctioneer hath acted agreeably to the condition of his bond, and to the directions of this act, during the time to which such bond shall relate, the same being expired, the said clerk shall cause a certificate thereof to be endorsed on such bond, which shall be *prima facia* evidence of the performance of the condition thereof; but if it shall appear that any such account was not truly made, or that the moneys accruing to the state have not been duly paid, or that the said auctioneer hath acted in any other respect contrary to the true intent and meaning of his bond, or of this act, it shall be the duty of such clerk to cause such bond to be prosecuted according to law, and in case of a verdict or judgment against such auctioneer, his license shall be vacated, and he shall afterwards, upon every sale of property at auction made by him, be liable to all the penalties which may be incurred, by this act, for acting as auctioneer without license.

Bond to be sued on, when.

False swearing deemed perjury.

SEC. 11. *Be it further enacted*, That if any person shall wilfully swear or affirm falsely, touching any matter herein before required to be verified by oath or affirmation, he shall suffer the pains and penalties which by law are prescribed for wilful and corrupt perjury.

Duty of collectors to prosecute, give information, &c.

SEC. 12. *Be it further enacted*, That it shall be the duty of the collectors, in their respective counties, to collect the duties imposed by this act, and to prosecute for the recovery of any sum which may be forfeited by virtue of this act; and all fines, penalties, and forfeitures, incurred under this act, shall be recovered in any court of record of this state, by action of debt or indictment, to the use of the state: and every such collector shall account for, and pay over all the duties collected by virtue of this act, at the times, in the manner, and under such penalties as are provided in case of other taxes collected by him for state purposes. This act shall take effect from and after the fifteenth day of January next.

[*Approved, December* 22, 1824.]

BANK OF MISSOURI.

31 Jan. 1817. **AN ACT to incorporate the Stockholders of the Bank of Missouri.**

Stockholders incorporated

SEC. 1. *Be it enacted by the General Assembly of the territory of Missouri*, That from and after the first day of February which will be in the year one thousand eight hundred and seventeen, all those persons who on the fourth day of September, in the year one thousand eight hundred and sixteen, in St. Louis in the territory of Missouri, subscribed certain articles of association, and formed a company or limited partnership under the name and style of "the president, directors and company of the bank of Missouri," and all such persons who on the said first day of February, in the year one thousand eight hundred and seventeen, shall hold any share or shares of the joint stock or funds of the said bank of Missouri, and their successors, being stockholders as aforesaid, shall be and the same are hereby incorporated and made a body politic, by the name and style of "the president, directors and company of the bank of Missouri;" and by that name may sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in courts of record and any other places whatsoever; and by that name may have and hold, purchase, receive, possess, enjoy and retain lands, tenements, hereditaments, goods, chattels and effects, of what nature, kind or quality soever, and the same sell, grant, demise, alien, convey and dispose of; and by that name shall have, during the continuance of this act, succession; and may have and use a common seal, and the same may break, alter and renew at pleasure; and shall have power to ordain, establish and put in execution such by-laws, ordinances and regulations as shall seem necessary and convenient for the government of said corporation, not being contrary to law, nor to this incorporation; and generally to do and execute all acts necessary or proper for the object of the said incorporation, subject to the rules, regulations, restrictions, limitations and provisions hereinafter described and declared.

Style of incorporation.

Powers

Capital stock

Sec. 2. *Be it further enacted*, That the capital stock of the said bank shall be and consist of two hundred and fifty thousand dollars, in shares of one hundred dollars each, exclusive of such shares as may hereafter be subscribed on the part of the territory of Missouri: *Provided always*, That on the application of the president and directors of the said bank, the then existing legislature may always extend and increase the amount of stock, capital estate and property which said corporation may hold.

Proviso.

Payments of subscribtions

Sec. 3. *Be it further enacted*, That all such persons who shall, after the passage of this act, and before the first day of February in the year one thousand eight hundred and seventeen, become subscribers for one or more shares of the capital stock of the said bank, shall, at the time of subscribing, pay to the president and directors of the said bank the sum of five dollars on each and every share by them subscribed, which, as also the sum of five dollars which has been paid on each share now subscribed, according to the articles of association aforesaid, shall be forfeited to the use of said bank, unless twenty dollars on each share in addition thereto is paid on the said first day of February in the year one thousand eight hundred and seventeen, to the said president and directors,—which said sum of twenty-five dollars above specified shall be the first instalment. And that the president and directors of said bank, from and after the first day of February in the year one thousand eight hundred and seventeen, may call for and demand from the stockholders respectively, all such sums of money by them subscribed, or which may be subscribed, and in such proportion, not exceeding the sum of twenty-five dollars on each share, as they shall see fit; and the said stockholders shall pay the same, under pain of forfeiting to the use of said bank all such share or shares, and of all previous payments thereon, upon which the same is not paid: *Provided, however*, That it shall be the duty of the said president and directors to give at least ninety days notice of such call or demand in one of the newspapers printed in the territory of Missouri.

Transaction of business.

SEC. 4. *Be it further enacted*, That the said bank shall transact its business in the town of St. Louis; and the stock, property, affairs and concerns of said bank shall be managed and conducted by nine directors, one of whom shall be president, who shall hold their offices for one year. Four of the directors and the president shall form a board or quorum for transacting business; and in case of sickness or necessary absence of the president, his place may be supplied by any director whom he, by writing under his hand, may nominate for that purpose, or in case of his not making such nomination, the board may appoint a president to act during his absence. And that the president and directors who may be in office under the said articles of association on the first day of February, one thousand eight hundred and seventeen, shall continue in office under and by virtue of this act of incorporation, until others shall be duly chosen in their stead. No person shall be a president or a director of said bank, who is not a citizen of the United States and of this territory, and a stockholder; and a director ceasing to be a stockholder, shall cease to be a director. All the directors to be elected shall be resident of the territory. Every stockholder, being a citizen of the United States, shall be entitled to vote at all elections to be holden by the stockholders in pursuance of the act of incorporation, and shall have as many votes, in proportion to the stock which he may hold, as follows: for one share, and not exceeding four shares, one vote each; for every two shares above four, and not exceeding twenty, one vote; for every four shares above twenty, and not exceeding forty, one

Directors how elected

vote; for every six shares above forty, and not exceeding one hundred, one vote; but no person or persons, bodies corporate or otherwise, shall be entitled to more than fifty votes: no stockholder shall be permitted to vote who has not held his stock two calendar months prior to the day of election. All stockholders living in the county of St. Louis shall vote, in the choice of directors, by ballot, in person; but every stockholder living out of said county may vote in person by ballot, or by a written ballot by him or her subscribed with his or her name, and duly acknowledged before a judge of the court, a justice of the peace, or a notary public, before whom such acknowledgment shall be made; and said ballot shall by him be sealed up and addressed to the cashier of said bank, and transmitted before the time of election, shall be received and counted in the election. No person, who is not a citizen of the United States, shall be entitled to a vote in any election of the said corporation.

General meeting of stockholders for electing directors.

SEC. 5. *Be it further enacted*, That a general meeting of the stockholders in the said bank, shall be holden on the first Monday of May in the year one thousand eight hundred and seventeen, and the first Monday of May in every year thereafter, at such place in the town of St. Louis as the president and directors shall direct and appoint by giving eight weeks notice in one or more of the newspapers printed in this territory, for the purpose of electing directors for the ensuing year; who, when elected, shall meet within twenty days succeeding their election, and shall immediately thereafter proceed to choose a president. And the president and directors for the time being shall continue in their places, and be organized by the assembling of a quorum, and the choice of a president. At all elections, the person having the greatest number of votes shall be deemed to be chosen. All elections shall be held under the superintendence of the president for the time being, and four stockholders, not being at the time directors, to be appointed by the directors, any three of whom shall be judges thereof; and they shall immediately thereafter notify the elected to meet within twenty days next ensuing the day, at the bank, and shall make a return of the persons elected, at their first meeting. Should two or more persons have an equal number of votes, the other individuals elected directors shall determine, by ballot, from among said persons, who shall be the director or directors. All elections shall be opened at ten o'clock in the forenoon and closed at three o'clock in the afternoon of the same day.

By-laws.

SEC. 6. *Be it further enacted*, That the president and directors shall have full power and authority to make, revise, alter and annul all such rules, orders, by-laws and regulations for the government of said corporation, and that of its officers, servants and affairs, as they shall from time to time think expedient; and to use, employ and dispose of the capital stock, funds and property of the said company for the interest and benefit of the stockholders, subject only to the restrictions herein contained: but the said company shall not take, for discounting any bill or note, more than at the rate of six per centum per annum on the amount due on such bill or note.

Rate of per cent on discounts.

Notes, bills, &c how issued, negotiable, obligatory, &c.

Sec. 7. *Be it further enacted*, That all promissory notes, bills of exchange, drafts, checks, and receipts for the payment of money, made on behalf of the said corporation, signed by the president, countersigned or attested by the cashier, shall be obligatory upon the said company, and shall possess the like qualities as to negotiability, and the holders thereof shall have the like action thereupon, as if such promissory notes, bills of exchange, drafts, checks or receipts had been made by or on behalf of a natural person.

Books, papers &c. subject to inspection of the directors.

Sec. 8. *Be it further enacted*, That the books, papers, correspondence and funds of the said company, shall at all times be subject to the inspection of the directors. And no director shall be entitled to loan, at any time, more than three thousand dollars from said bank, either in his own name or the name of any other person.

Cashier and other officers

No compensation to directors.

Report to legislature.

Sec. 9. *Be it further enacted*, That the president and directors aforesaid shall have power to appoint a cashier, and all other officers and servants for executing the business of the said company, respectively; but no compensation shall be given to a director for his services. And the president and directors shall, on the first day of each session of the legislature of this territory, lay before said legislature an account stating the situation of the bank and its funds, which said account shall be sworn to by said president and directors, and by the cashier of the said bank; and if it shall appear to the said general assembly that the regulation, restrictions or provisions of this act have not been complied with, to the prejudice of any person or persons, it may be lawful for the said general assembly to repeal, amend, annul and make void, by an act to that effect, this act of incorporation, any law, usage or custom to the contrary notwithstanding. And if the said president and directors shall neglect or refuse to make such statement, according to the provisions of this act, the then existing legislature shall have power to repeal and make void this charter, any thing in this act to the contrary notwithstanding.

Transfer of stock.

SEC. 10. *Be it further enacted,* That the shares of capital stock, at any time owned by any individual stockholder, shall be transferable only on the books of the bank, according to such rules as may, conformably to law, be established in that behalf by the president and directors; but debts actually due and payable to the company, days of grace for payment being past, by a stockholder requesting a transfer, must be satisfied before such transfer shall be made, unless the president and directors shall direct to the contrary.

Dividend of profits.

SEC. 11. *Be it further enacted,* That the dividend of the profits of the company, or so much of such property as may be deemed expedient and proper, shall be declared half yearly, in the first week of April and October in each year. The amount of said dividend shall, from time to time, be determined by the president and directors, and shall in no case exceed the amount of the net profits actually acquired by the company, so that the capital stock of the said company shall never be impaired by dividends.

Discount and loans, not more than double the amount of capital.

SEC. 12. *Be it further enacted,* That the said company shall not, at any time, discount or loan a greater sum than double the amount of the capital stock thereof, which shall be actually paid in. No standing or unlimited accommodation shall be granted to or by the president and directors of said company.

Dividends impairing capital stock

SEC. 13. *Be it further enacted,* That if the said president and directors shall at any time wilfully and knowingly make or declare any dividend which shall impair the said capital stock, all the directors present at the making or declaring of said dividend, and consenting thereto, shall be liable in their individual capacities to the company for the amount or proportion of said capital stock, so divided by the said directors; and each director who shall be present at the making or declaring such dividend shall be deemed to have consented thereto, unless he shall immediately enter in writing his dissent on the minutes of the proceedings of the board, and within twenty days thereafter give notice thereof in some one of the newspapers printed in this territory.

Property and trade of the company.

SEC. 14. *Be it further enacted,* That the company shall in no case be owners of any ship or vessel, directly or indirectly be concerned in trade, or the importation or exportation, purchase or sale of any goods, wares or merchandize whatever, except bills of exchange, bullion, stock of the United States or of incorporated institutions, and such ships, vessels, goods, wares or merchandizes as shall be truly pledged to them, by way of security for debts due, owing or growing due to the said company, or purchased by it to secure such debts. The said company shall not purchase or hold any lands, tenements or other real estate, other than what may be necessary for the convenient transaction of its business, unless such lands, tenements and real estate shall have been *bona fide* mortgaged to the company by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of dealings, or purchased to secure debts contracted with or due to the company; and in every instance in which the company may become the owners or claimants of lands, tenements or real estate, the president or directors are empowered to sell or dispose of the same in such manner as they shall deem beneficial for the said company.

Vacancies in the direction

SEC. 15. *Be it further enacted*, That if any vacancy shall at any time happen among the directors, by death, resignation or otherwise, the rest of the directors for the time being shall elect a director to fill the vacancy.

General meetings.

SEC. 16. *Be it further enacted*, That any number of stockholders, who shall be proprietors of not less than five hundred shares, may, for any purpose relative to the institution, at any time apply to the president and directors to call a general meeting of the stockholders; and if by them refused, the said number of stockholders, proprietors of not less than five hundred shares as aforesaid, shall have power to call a general meeting of the stockholders, giving at least sixty days notice in one or more of the public newspapers printed in this territory specifying in such notice the object or objects of such call.

How called.

Amount of debts of the company.

SEC. 17. *Be it further enacted*, That the total amount of debts which the said company shall at any time owe, whether by bond, bill, note or other contract, shall not exceed twice the amount of capital stock actually paid in: *Provided*, That nothing herein contained shall be construed to prevent the said company from receiving money on deposit, and owing therefor the just amount of the money actually deposited in said bank for safe keeping, in addition to the other debts said corporation may owe; and in case of excess, the directors under whose administration it shall happen shall be liable for the same in their natural and private capacities, and an action or actions may in such cases be brought against them or any of them, they or any of their heirs, executors or administrators, in any court proper to try the same, by any creditor or creditors of said company; and may be prosecuted to judgment and execution, any condition, covenant or agreement to the contrary notwithstanding: but this shall not be construed to exempt said company, or the lands, tenements, goods or chattels of the same, from being liable for and chargeable with the

Liability in case of excess.

said excess. Such of said directors, who may have been absent when said excess was contracted or created, or who may have dissented from the resolution or act whereby the same was contracted or created, may respectively exonerate themselves from being liable, by forthwith giving notice of the fact, and of their absence or dissent, in some one of the newspapers printed in this territory, and to the stockholders, at a general meeting which they shall have power to call for that purpose. And the company, and the capital stock thereof, shall be liable for all the debts and engagements contracted. And the body corporate hereby created, and the capital stock thereof, shall be liable for all the debts and engagements contracted, or which, before or on the first day of February, in the year one thousand eight hundred and seventeen, shall or may be contracted by the company or co-partnership heretofore created by the articles of association herein before mentioned, and which carried on the banking business under the name and style of "the president, directors and company of the bank of Missouri;" and the creditors of the said co-partnership shall have the like remedy by action against the said body corporate, as they had, or have, or may or can have, against the said co-partnership.

Failure of election.

Sec. 18. *Be it further enacted*, That in case it shall happen at any time that an election of directors should not be made on any day pursuant to this act of incorporation it ought to have been made, the said company shall not for that cause be deemed to be dissolved; but it shall be lawful on any other day to hold and make an election of directors, at a meeting to be called in such manner as shall be prescribed by the laws and ordinances of the said company, not inconsistent with or contrary to the provisions of this act.

Place of transacting business.

Sec. 19. *Be it further enacted*, That the said company shall be established and kept, and the buildings necessary for the accommodation thereof erected, and the business thereof at all times hereafter transacted, at such place or places, in the town of St. Louis, as the president and directors of said company shall designate and point out, which said location or locations, when so made, shall be unalterable; and until the buildings necessary for the accommodation of said company shall be erected, and so far completed as to admit the transaction of business therein, or in case of an accident, by fire or otherwise, happening to the building that may hereafter be erected for the use of the said company, [said bank] shall be established and kept, and the business thereof conducted, at such times and places, in the town of St. Louis, as the president and directors thereof

Branches.

shall designate and appoint. And whenever the inhabitants of any county now established, or which may hereafter be established by law in this territory, shall have subscribed for stock in the said bank to the amount of forty thousand dollars, and paid their proportion on that sum into the bank, a branch bank shall within six months thereafter be established in such county, for the purpose of discount and deposit only, and upon the same terms and in the same manner as practised at the bank; and to commit the management of the said offices, and the making of the said discounts, to such persons, under such agreements and such regulations as they shall deem proper, not being contrary to law or to the constitution of said bank; and in each office of discount and deposit, there shall be vested by the president and directors double the amount of the stock paid in by the stockholders of the county where such bank of discount and deposit shall be established: *Provided always*, That a majority of the stockholders of said county shall previously, by writing, request the establishment of such office of discount and deposit, and that the same shall be had six months before the time on which it shall be requested to establish such office of discount and deposit.

President & cashier.

Sec. 20. *Be it further enacted*, That a majority of the whole number of directors shall be necessary in the choice of a president or cashier.

Bonds of cashier and clerk.

Sec. 21. *Be it further enacted*, That every cashier or clerk, before he enters on the discharge of the duties of his office, shall give bond, with two or more securities, to the satisfaction of the president and directors, such cashier in a sum not less than ten thousand dollars, and each clerk in a sum not less than six thousand dollars, conditioned for the faithful discharge of his duty, and it shall not be lawful for any person being a stockholder in the said bank or any other bank, to be elected or appointed as a cashier or clerk in said bank.

Every stockholder a member of the corporation.

Sec. 22. *Be it further enacted*, That every stockholder, whether he be either by original subscripton or by transfer, shall be considered as a member of this corporation, and when he ceases to be a stockholder he ceases to be a member.

Territory may subscribe for stock and vote by agent

Sec. 23. *Be it further enacted*, That it shall and may be lawful for the governor of the territory for the time being, upon joint resolution of the legislative council and house of representatives of this territory, requesting him to that effect, at any time within ten years from and after the first day of February, in the year one thousand eight hundred and seventeen, to subscribe, for and in the name of the territory of Missouri, any part of the whole of one thousand shares, for the use of said territory. Any person authorized by a joint resolution of the legislative council and house of representatives for that purpose, shall have as many votes in the election of directors, and in managing the affairs of said bank, as the number of shares actually subscribed for on the part of the said territory would give to any stockholder possessing the same, conformably to the provisions of this act of incorporation.

Moneys in payment therefor.

Sec. 24. *Be it further enacted*, That the governor for the time being, shall have power to draw from the territorial treasury the sums of money necessary to pay the amount of the shares subscribed for, on the part of the territory of Missouri, that may hereafter be appropriated for that purpose.

Loans to the territory.

Sec. 25. *Be it further enacted*, That it shall be the duty of the said bank to loan to the territory of Missouri, when required by the governor of the territory for the time being, upon the joint resolution of the legislative council and house of representatives of this territory requesting him to that effect, without endorser, any sum of money not exceeding the amount of half the shares actually paid in on the part of the said territory, for a period not exceeding one year: *Provided*, That ninety days notice of the intended application for said loan, be given to the president and directors of said bank.

Books of subscription.

Sec. 26. *Be it further enacted*, That it may be lawful for the president and directors of said bank to open a book or books of subscription for unsubscribed stock in said bank, as often and at such places in the territory of Missouri as they shall deem fit, so as to give a fair opportunity to any citizen or citizens of said territory to become subscribers for stock in said bank, giving at least sixty days notice of the opening of said book or books, in some newspaper printed in said territory; and if during the time for which the said book or books are opened for the last time, the whole amount of stock shall not be subscribed, then the remaining part thereof not subscribed for, may be sold by the president and directors of the said bank for the time being, to the best advantage, for the use of said bank: *Provided*, That no sale of stock shall be made under par: *And provided*, That not more than one fourth of the capital stock in said bank, shall be subscribed by, for, or sold to, persons residing out of this or Illinois territory.

Specie payments.

Sec. 27. *Be it further enacted*, That from and after the passage of this act, the said bank of Missouri, hereby incorporated, shall pay specie upon all bills and notes which may have been or which may hereafter be drawn and payable by the said bank of Missouri, or by the president and directors and cashier thereof, if thereunto required by the person or persons who may be the holder of such bill, note or notes, under the penalty of forfeiting at the rate of five per centum per month, for each and every month such specie payment may be refused, in addition to the amount of such bill, note or notes, to be recovered in a summary way, by motion before any justice of the peace, or court having jurisdiction thereof, in the name or for the use of any person or persons who were the owners of said bill or note or notes, at the time they were presented for payment.

Penalty for default.

SEC. 28. *Be it further enacted*, That in all suits and actions prosecuted against the said corporation, it shall be a sufficient service of all writs, notices or judicial process, to serve the same upon the president or any of the directors for the time being.

Process against corporation.

SEC. 29. *Be it further enacted*, That if any president, director, officer, or other person holding any share or capital of the said bank stock, shall commit any fraud or embezzlement, touching the money or property of the said bank, he or they shall be liable to be prosecuted, in the name of the United States, by indictment, and upon conviction thereof, shall, besides the remedy that may be had by action in the name of the president and directors of said bank of Missouri, for the fraud and embezzlement aforesaid, forfeit to the said company, all his shares and stock in said bank.

Embezzlement.

SEC. 30. *Be it further enacted*, That this corporation shall continue until the first day of February, which will be in the year one thousand eight hundred and thirty eight;—but nevertheless, the proprietors of two thirds of the capital stock may, by their concurring votes, at a general meeting, to be called for that purpose, dissolve the same at an earlier period: *Provided*, That notice of such meeting, and its object, shall be published in one or more newspapers printed in the territory of Missouri, for at least six months successively, previous to the time of such meeting.

Continuance of charter till 1838.

SEC. 31. *Be it further enacted*, That on the dissolution of this corporation, whenever the same shall be determined on as aforesaid, effectual measures shall be immediately taken by the president and directors then in office, for closing all the concerns of the corporation, and for dividing the capital and profits which may remain, among the stockholders, in proportion to their respective interests.

Dissolution and settlement of accounts.

SEC. 32. *Be it further enacted*, That nothing in this act contained shall be construed to deprive the legislature of the power and right to impose taxes on the stock of said bank, or the dividends thereof; which tax imposed by the legislature, shall be apropriated for the use of a free school

Right of legislature to tax.

or schools, in such manner as a future legislature may order and direct: *Provided*, That such tax shall not be more than equal to other taxes imposed by law on personal property.

Non-acceptance of charter.

SEC. 33. *Be it further enacted*, That should the said company, hereby incorporated under the style of the President and Directors of the Bank of Missouri, fail, neglect, or refuse, to receive or act under this act of incorporation, within six months after it becomes a law, then and in that case the act of incorporation shall be forfeited and become void and of no effect, from after the expiration of said six months.

Nature and continuance of this act.

SEC. 34. *Be it further enacted*, That this act shall to all intents and purposes be deemed and held a public act, and be and continue in force until the said first day of February, will be in the year one thousand eight hundred and thirty eight, and from and after the passage thereof.

[*Approved, January* 31, 1817.]

BANK OF ST. LOUIS.

21st August, 1818.

AN ACT to incorporate the stockholders of the Bank of St. Louis.

Preamble.

Whereas Auguste Chouteau and others have, by their petition presented to the legislature, prayed that a banking company may be incorporated, under the style and name of the President, Directors and Company of the Bank of Missouri, and the general assembly being of opinion that the institution of a bank with a limited capital will be of public utility:

Commissioners appointed.

Be it therefore enacted by the general assembly of the territory of Missouri, That Auguste Chouteau, Samuel Hammond, John B. C. Lucas, Clement B. Penrose, Moses Austin, Bernard Pratte, Manual Lsia, Rufus Easton, Risdon H. Price, Thomas Brady, Bertholomew Berthold, Christian Wilt, and Robert Simpson, be, and they are hereby appointed commissioners for the purposes herein after directed; and all such persons as hereafter shall become stockholders, their successors and assigns, shall be, and hereby are ordained, constituted and declared to be, from time to time, and until the first day of August, which will be in the year one thousand eight hundred and thirty-eight, a body corporate and politic in fact and in name, by the

Style of the corporation.

name of the President, Directors and Company of the Bank of St. Louis; and by that name, they and their successors and assigns, until the said first day of August, in the year one thousand eight hundred and thirty-eight, shall and may

Powers. have continual succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places whatsoever, and in all manner of actions, suits, complaints, matters, and causes whatsoever; and that they and their successors and assigns may have a common seal, and may make, change and alter the same at their pleasure; and also that they and their successors and assigns, by the same name of the President, Directors and Company of the Bank of St. Louis, shall be in law capable of purchasing, holding and conveying any estate, real, personal, or mixed, for the use of the said corporation.

1500 shares, each share $100. Sec. 2. *Be it further enacted*, That a share in the said bank shall be one hundred dollars, and the number of shares shall not exceed fifteen hundred shares, exclusive of any shares which may be subscribed on the part of the territory of Missouri. And a book or books for subscriptions shall be kept open under the direction of the said commissioners; and the first opening of the books shall be on the same day, at St. Louis, St. Charles, Ste. Genevieve, Mine a Burton, Cape Girardeau and New-Madrid; and the said books shall be continued and kept open until the said number of shares shall be subscribed, or such part thereof, not less than seven hundred and fifty shares, as they or a majority of them shall deem sufficient; and thereafter the said books shall be kept open at such time and places as the president and directors of said bank or a majority of them shall think proper. And the whole amount of the stock, estate and property which the said corporation shall be authorized to hold, including the capital stock above mentioned, shall never exceed in value four hundred and fifty thousand dollars: *Provided always*, That the legislature of the territory of Missouri, on the application of the president and directors of said bank, may always extend and increase the amount of stock, capital, estate and property which said corporation may hold.

Books of subscription opened.

And kept open.

Capital not to exceed $450,000.

Proviso.

President and 13 directors. Sec. 3. *Be it further enacted*, That the stock, property, affairs and concerns of said corporation shall be managed and conducted by thirteen directors, one of whom shall be president, who shall hold their offices for one year; which directors shall be stockholders, and citizens of the territory of Missouri, and nine of them at least residing at or near the town of St. Louis, and the other four of them residing in the town of Ste. Genevieve or elsewhere in the territory,—and shall be elected on the second Monday in December in every year, at such place, in the town of St. Louis, as a majority of the directors, who shall on all occasions

Annual elections 2d Monday of December.

constitute a board for doing business for the time being, shall appoint; and public notice shall be given by the said directors, in one of the newspapers printed in the territory, of such time and place, not more than sixty days nor less thirty days previous to the day of holding said election. And the said election shall be held and made by such of the stockholders of said bank as shall attend for the purpose, either in person or by proxy, which proxies shall always be stockholders: and all elections shall be by ballot, and the thirteen persons who shall have the greatest number of votes, and residing as aforesaid, shall be directors; and if it should happen at any election that two or more persons have an equal number of votes, then the said directors in office at the time of such election, or a majority of them, shall proceed to ballot, and by plurality of votes determine which of the said persons so having an equal number of votes, shall be the director or directors, so as to constitute the whole number of thirteen: and the said directors chosen at such election, as soon as may be thereafter, shall proceed in like manner to elect, by ballot, one of their members as president. And if a director shall remove out of this territory, his office shall be considered as vacant; and whenever any vacancy or vacancies shall happen among the directors, by death, resignation or removal, such vacancy or vacancies shall be filled, for the remainder of the year in which they shall happen, by such person or persons as the remainder of the directors for the time being, or a majority of them, shall appoint.

Votes by proxy.

Directors to elect the president.

Vacancies how supplied.

SEC. 4. *Be it further enacted*, That in case it should at any time happen that an election of directors should not be made on the day when pursuant to this act it ought to have been done, the said corporation shall not for that cause be deemed to be dissolved, but that it shall and may be lawful, on any other day within three months thereafter, to hold and make an election of directors, in such manner as is herein before directed, or in such manner as shall have been regulated by the laws and ordinances of the said corporation. And the directors then in office when the elections as aforesaid ought to have been made, shall continue to be directors until the election herein contemplated shall be made; any thing in this law to the contrary notwithstanding.

Corporation not dissolved by failure in elections, which may be held three months afterwards.

SEC. 5. *Be it further enacted*, That the directors for the time being, or a majority of them, shall have power to make and prescribe such by-laws, rules and regulations and ordinances as to them shall appear proper, needful, necessary and convenient, touching the management and disposition of the stock, property, estate and effects of said

By-laws as to the management of the affairs of the bank.

corporation, the duties and conduct of the officers, clerks and servants employed therein, the election of directors, and all such other matters as appertain to the business of a bank; and shall also have power to appoint as many officers, clerks and servants for carrying on the business of said bank, and with such salaries and allowances, as to them shall seem meet: *Provided*, That such by-laws, rules, ordinances and regulations be not repugnant to the constitution and laws of the United States or of this territory.

Where the bank to be kept.

SEC. 6. *Be it further enacted*, That the said bank shall be established and kept, and the buildings necessary for the accommodation thereof erected, and the business thereof at all times hereafter transacted, at such place, in the town of St. Louis, as the directors of said bank shall designate and point out; which said location, when so made shall be unalterable. And until the buildings necessary for the accommodation of said bank shall be erected, and so far completed as to admit the transaction of business therein, the said bank shall be established and kept, and the business thereof transacted at such times and places, in the town of St. Louis, as the directors thereof shall designate and appoint.

Temporary place in St. Louis may be chosen.

The territory may subscribe 150 shares.

SEC. 7. *Be it further enacted*, That the territory of Missouri shall have a right to subscribe any number of shares to said bank, not exceeding in the whole the number of one hundred and fifty, at any time when it shall by law authorize any person or persons for that purpose; and the territory shall have a right to increase the number of shares and stock which the said corporation may hold to the amount of the sum to be subscribed, if the number of shares herein before limited shall be subscribed before such subscription shall take place on the part of the territory.

Debts of the bank not to exceed double the amount of stock actually paid.

SEC. 8. *Be it further enacted*, That the total amount of debts which the said corporation shall at any time owe, whether by bond, bill, note, or other contract, shall not exceed double the amount of the capital stock subscribed and actually paid into the bank; and in case of excess, the directors under whose administration it shall happen shall be liable for the same in their separate and private capacities: but this act shall not be construed to exempt the said corporation, or any estate, real or personal, which they may hold as a body corporate, from being also liable for and chargeable with such excess; but such of the directors who have been absent when such excess was contracted for, who may have dissented from the resolution or act whereby the same was contracted, shall not be so liable.

SEC. 9. *Be it further enacted*, That the lands, tenements

Bank to hold only such real property as may be necessary for its accommodation.

Except &c.

Bank not to buy and sell merchandize.

and hereditaments, which it shall be lawful for said corporation to hold, shall be only such as be requisite for its immediate accommodation, in relating to the convenient transacting of its business, or such as shall have been *bona fide* mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts. And, further, the said corporation shall not, directly or indirectly, deal or trade in buying or selling any goods, wares, merchandizes, or commodities whatsoever. It shall nevertheless be lawful for said bank to receive and dispose of all bonds, bills, notes, checks, or drafts, made payable or negotiable at the bank.

In what manner the paper of the bank shall be negotiable.

Under seal.

By endorsement.

By delivery.

SEC. 10. *Be it further enacted*, That bills obligatory and of credit, under the seal of said corporation, which shall be made to any person or persons, shall be assignable, by endorsement thereupon under the hand or hands of such person or persons, his, her, or their assignee or assignees, and so as absolutely to transfer and vest the property thereof in each and every assignee or assignees to bring and maintain an action thereupon in his, her or their own name or names; and bills or notes which may be issued by order of the said corporation, signed by the president and countersigned by the cashier, promising the payment of money to any person or persons, his, her or their order, or to bearer, though not under the seal of the said corporation, shall be binding and obligatory upon the same, in like manner and with like force and effect as upon any private person or persons if issued by him, her or them, in his, her or their private or natural capacity or capacities; and shall be assignable and negotiable according to the law of merchants, in like manner as if they were so issued by such private person or persons,—that is to say, those which may be payable to any person or persons, his, her or their order, shall be assignable by endorsement, and those which are payable to *bearer* shall be negotiable and assignable by delivery only.

Directors may call for the payment of stock.

SEC. 11. *Be it further enacted*, That it shall and may be lawful for the directors for the time being to call for and demand from the stockholders, respectively, all such sums of money by them subscribed or to be subscribed, at such times and in such proportion as they shall see fit, under pain of forfeiture of their share or shares, and of all previous payments thereon to the said company, always, however, giving sixty days notice of such call and demand in one of the newspapers published in the territory as aforesaid.

Charter not to be forfeited, for non user bill. See 1817.

Operations to begin when 750 shares are subscribed.

Sec. 12. *Be it further enacted*, That this present act of incorporation shall in no wise be forfeited by any *non user* whatsoever, at any time before the second Monday in December which will be in the year one thousand eight hundred and seventeen; and that it shall on that day, if no prior election has taken place and the stock subscribed shall amount to the sum of seventy-five thousand dollars, be lawful for the stockholders above mentioned to assemble for the purpose of carrying the same into effect, any want of notice in the manner above prescribed to the contrary in any wise notwithstanding. And for the purpose of putting the said bank into operation, it shall be the duty of the said commissioners, or a majority of them, as soon as seven hundred and fifty shares shall be subscribed for as aforesaid, to give public notice thereof in some newspaper printed in this territory, and shall appoint a time, not more than sixty days nor less than forty days, when the stockholders shall assemble as is provided in the third section of this act for the purpose of choosing the first directors.

Number of votes in proportion to shares.

Non residents who hold stock not allowed to vote

Sec. 13. *Be it further enacted*, That each stockholder, at elections and on all other questions, shall be entitled to the number of votes proportioned to the number of shares which he, she, or they may be possessed of at the time of such election, according to the following ratio, that is to say: one vote for every share not exceeding ten shares; one vote for every five shares over ten, and up to thirty; and one vote for every ten shares over thirty: but no person, co-partnership or body politic shall be entitled to more than seventeen votes; and no stockholder, unless actually resident within the United States, or any of the territories thereof, shall vote at elections, or on any other occasion, either in person or by proxy.

Dividends of profits every six months

False dividends.

Cashier and clerks to give bonds.

Sec. 14. *Be it further enacted*, That it shall be the duty of the stockholders to make, every six months, dividends of so much of the profits of said bank, as to them or a majority of them shall seem advisable; and if the said directors shall at any time, wilfully and knowingly, make or declare any dividend which shall impair the said capital stock, all the directors present at the making or declaring said dividend, and consenting thereto, shall be liable, in their individual capacities, to the company, for the amount or proportion of said capital stock so divided by the said directors; and each director who shall be present at the making or declaring such dividend, shall be deemed to have consented thereto, unless he shall immediately enter into writing his dissent on the minutes of the proceedings of the board.— And every cashier and clerk, before he enters upon the duties of his office, shall give bond, with two or more sureties to be approved of by the directors for the time being, or a majority of them, in a sum not less than ten thousand dollars for said cashier, and five thousand dollars for each clerk, conditioned for the faithful discharge of their several duties.

6 per cent.

Sec. 15. *Be it further enacted*, That the said corporation shall not demand any greater interest on any loan or discount, than at the rate of six per centum per annum, in advance.

Transfer of stock.

Sec. 16. *Be it further enacted*, That the stock of the said corporation shall be assignable and transferrable, according to such rules as shall be instituted in that behalf by the laws and ordinances of the same; and all debts actually due and payable to the bank by a stockholder, requesting a transfer, must be satisfied before such transfer shall be made, unless the president and directors shall direct to the contrary.

Offices of discount and deposit may be established.

Sec. 17. *Be it further enacted*, That it shall and may be lawful for the directors aforesaid, to establish offices wheresoever they shall think fit, in the territory of Missouri, for the purpose of discount and deposit only, and upon the same terms and in the same manner as shall be practised at the bank, and to commit the management of said offices, and the making of the said discounts, to such persons, under such agreements, and subject to such regulations, as they shall deem proper, not being contrary to law or the constitution thereof: *Provided nevertheless*, That the first office of discount and deposit shall be established at the town of Ste. Genevieve, and that no office of discount and deposit shall be established within less than fifty miles of the principal bank, nor within less than fifty miles of each other.

The first to be at Ste. Genevieve.

Lead, peltry and furs, &c. may be taken in place of endorsers.

Sec. 18. *Be it further enacted*, That it shall and may be lawful for the said corporation, to receive as security for any loan or discounts made by it, any lead, or peltry, or furs, or other property, in lieu and in the place of any endorser or endorsers, to the bills, notes or obligations they may receive for payment of the same: *Provided nevertheless*, That the said property so received as security shall always be deposited, real property excepted, and left in the care, possession and control of the bank, either at the capital bank, or at the office of discount and deposit, or within one mile of the same, and at no other place or places whatsoever; which said property so deposited, it shall and may be lawful for the bank, after the time for which said property was so deposited shall have elapsed, to sell and dispose of, without delay, in any manner they shall judge proper, giving ten days public notice of the time and place of selling the same, any law or custom to the contrary notwith-

When the same may be sold.

Deposit at Ste. Genevieve.

standing: *And provided nevertheless*, That it shall and may be lawful for said bank to establish a place of deposit at Ste. Genevieve, so soon as they shall deem proper, prior to the establishment of an office of discount and deposit at Ste. Genevieve, under the control and direction of such person or persons as the president and directors shall direct and appoint, any thing in this act to the contrary notwithstanding.

General meeting of the stockholders.

SEC. 19. *Be it further enacted*, That the president and directors shall have power at all times to call a general meeting of the stockholders, for purposes concerning the interest of the bank, giving at least sixty days notice, in one or more newspapers published in the territory, of such meeting.

Proprietors of 800 shares may call a general meeting.

SEC. 20. *Be it further enacted*, That any number of stockholders who shall be proprietors of not less than eight hundred shares, may, at any time, for any purpose relative to the bank, apply to the president and directors, to call a general meeting of the stockholders; and if by them refused, the said number of stockholders, of not less than the number of shares aforesaid, shall have power to call a general meeting of the stockholders, giving at least sixty days notice in one or more newspapers printed in the territory, specifying in such notice, the object or objects of such call.

Not more than a fourth of the capital be sold out of this and Illinois territory.

Penalty.

Decided by president & directors, with appeal.

Non-residents not to have more than a fourth of the votes.

Excess above 3-4ths of capital, may be

SEC. 21. *Be it further enacted*, That not more than one fourth part of the capital stock of said bank, shall be sold either directly or indirectly out of the territory of Missouri and Illinois; nor shall any person holding stock, assign or transfer the same, either directly or indirectly, to any person or persons residing out of the two territories aforesaid; and any person or persons who shall make any purchase or sale of stock, contrary to the provisions of this section, shall forfeit such share or shares to the use of the bank, to be adjudged on by the president and directors. And the person or persons, finding him, her or themselves aggrieved by such judgment of forfeiture by said directors, shall have the right of appeal to the superior court of the territory: nor shall any person or persons, residing in either of the two territories aforesaid, hold, either directly or indirectly, any share or shares, for the use of any person residing out of the two territories aforesaid, under penalty of the same forfeiture as is above prescribed: *Provided*, That the number of votes given at any election, by any person or persons residing out of the two territories, shall not exceed one fourth of the whole number of votes given at such election: *Provided also*, That in case of a greater amount than three fourths of the capital stock should be subscribed for, or held by transfer or purchase, within the two territories, it shall and may be lawful for any person or persons to sell such excess, with the approbation of the president and directors, to any person or persons residing out of said territories.

sold to non-residents.

The president and six directors to form a board

Sec. 22. *Be it further enacted*, That six of the directors, with the president, shall form a board or quorum for transacting all the business of the company; and in case of sickness or necessary absence of the president, his place may be supplied by any director, whom he, by writing, under his hand, may nominate for that purpose; and if the directors are dissatisfied with such nomination, or in case of his not making such nomination, the board may appoint a president to act during his absence.

How the president's absence to be supplied.

When a branch bank shall be established at Ste Genevieve.

Conditions.

Sec. 23. *Be it further enacted*, That so soon as seven hundred and fifty shares shall be subscribed for, one third of the amount called in by the president and directors, and also one third of the bills and notes issued by the bank, shall be invested in a branch bank, or office of discount and deposit, at Ste. Genevieve; and so on shall the said amount paid into or vested in the said branch bank or office of discount or deposit, at Ste. Genevieve, increase, according to the actual amount of capital paid into the bank, until the capital of the said branch bank shall amount to the sum of fifty thousand dollars, and notes and bills in proportion; but the said branch bank, at Ste. Genevieve, shall never exceed in capital the sum of fifty thousand dollars, and notes and bills in proportion, whatever increase of capital may hereafter be granted by the legislature, unless the said legislature, in granting said increase of capital, shall otherwise provide: *Provided*, That all officers that may be appointed to preside over and conduct said branch bank, shall be appointed and chosen from among persons resident at Ste. Genevieve, being stockholders.

Public act.

Construction

Sec. 24. *Be it further enacted*, That this act be and is hereby declared to be a public act, and that the same be, for the time therein declared, limited and construed, in all courts and places, benignly and favorably for every beneficial purpose therein mentioned.

This act shall take effect and be in force from and after the passage thereof.

[*Approved, August* 21, 1813.]

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BANKS, PRIVATE.

AN ACT to prevent the circulation of Private Bank Notes. 10 Dec. 1824.

No person without au-

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That it shall not be lawful for any person or thority of law to issue notes &c. as a circulating medium.

Punishment by fine and imprisonment.

Proviso.

persons, bodies politic or corporate, who shall not have been authorized or empowered by a law in force in this state, so to do, with the intention to create, or put into circulation, a paper circulating medium, issue, or circulate, or directly or indirectly cause to be issued, or put into circulation, any note, bill, check, or ticket, purporting or evidencing, or intending to purport or evidence, that any sum of money will be paid to any person receiving or holding such note, bill, check, or ticket, or that it will be received in payment of any debts or dues, or to be passed or used as a general currency, or medium of trade, traffic or commerce, in lieu of money; and if any person or persons, bodies politic or corporate, not so authorized as aforesaid, shall, contrary to the true intent and meaning of this act, directly or indirectly, issue or put into circulation, or shall sign, countersign or endorse any note, bill, check, or ticket, as aforesaid, with intent as aforesaid, shall be held and taken, and he, she, or they are hereby declared to be guilty of misdemeanor, and upon conviction thereof, on indictment or presentment, shall be fined in a sum not less than one hundred, nor more than three hundred dollars, and imprisonment for a term not less than twelve months, at the discretion of the court before whom such conviction shall be had: *Provided*, That nothing herein contained shall be construed to prevent any individual from giving his or her bond or note, in consideration of any contract, or for any sum which may be *bona fide* due to the person receiving the same, or the holder thereof from transferring the same: *Provided*, he, she, or they so making the transfer shall endorse his, her, or their name on the back thereof, or for drawing a check or draft for any sum actually due to the drawer.

Passing unlawful notes

Punishable by fine.

SEC. 2. *Be it further enacted*, That if any person or persons, society, or company of men, shall either vend or pass, or shall receive in payment, or offer in payment, any bills of credit, notes, or other paper currencies whatever, which either have been, or hereafter shall be struck, issued, emitted, or put into circulation, to be passed or used as a general currency, or circulating medium of trade, traffic, or commerce, in lieu of money, as mentioned in the preceding section of this act, on the fund or credit of any private person or persons, society, or company of men, either in the state or any of the states or territories of the United States, every person or persons, society, or company of men, so offending, shall forfeit and pay, for each and every offence, the sum of fifty dollars; to be recovered by action of debt, founded on this statute, with costs of suit, to the use and benefit of the person who shall sue for the same, before any justice of the peace, of the county where the offence shall have been committed: *Provided*, That this section shall not be construed to effect the notes issued by any bank authorized by law, in this state, or any of the states or territories of the United States, except those notes which are or shall hereafter be issued for a less sum than one dollar; nor shall it effect any person or persons who shall present any of such paper currency for payment, to the person or persons, society, or company of men, who issued the same.

Proviso.

SEC. 3. *Be it further enacted*, That any offender against the provisions of the first section of this act, may at any time be apprehended by warrant of any justice of the peace, and bound to appear at the next circuit court to be held for the county, when he or she may be compelled to enter into a recognizance, with security, conditioned for his or her good behavior during twelve months, and more particularly not to violate this act; and if he or she, afterwards offend in like manner, it shall be deemed a breach of recognizance.

Offenders to be apprehended, and give recognizance.

[*Approved, December* 10, 1824.]

BILLIARD TABLES.

AN ACT taxing Billiard Tables.

26 Nov. 1824.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That it shall be the duty of the clerks of the courts or tribunals transacting county business, respectively, to issue at each term as many blank licenses for keepers of billiard tables as the said court or tribunal may direct, and deliver the same to the collector of the county; and there shall be levied and collected on every such license, a state tax of fifty dollars for every six months, to be paid, by the person obtaining such license, to the collector; and the form of such license shall be as follows:

County courts to issue licenses for keeping.

Tax on.

Form of license.

STATE OF MISSOURI, } *To all who shall see these presents:*
County of ——,

KNOW YE, That ——, having this —— day of ——, eighteen hundred and ——, paid to the collector of said county, the sum of fifty dollars, being the semi-annual tax imposed on billiard tables used within this state: THEREFORE, the said —— is hereby authorized to keep and use one billiard table, within said county, for the period of six months from the date aforesaid.

IN TESTIMONY WHEREOF, I ——, clerk of ——, have hereunto affixed my seal of office, this —— day of ——, 18—.

A. B., *Clerk.*

Granted, this —— day of ——, 18—. C. D., *Collector.*

To be granted by collectors.

And it shall be the duty of the collectors, in their respective counties, to grant to any person applying for the same, a license to keep a billiard table, upon the applicant paying therefor the semi-annual tax as aforesaid, and a further sum of one dollar as a compensation to the clerk for issuing the same; which license, being signed by the clerk, attested by the seal of the court or tribunal, and countersigned by the collector as aforesaid, shall authorize the person obtaining the same to keep and use a billiard table within such county for the period of six months.

Penalty for keeping without license.

Sec. 2. *Be it further enacted*, That if any person shall keep, or permit to be used or kept, any billiard table without having a license therefor as aforesaid, every person so offending shall, in addition to the tax aforesaid, forfeit and pay the sum of three hundred dollars, to be recovered by indictment or by action of debt in any court having jurisdiction thereof, to the use of the state.

Courts to settle with collectors, and certify to auditor.

Sec. 3. *Be it further enacted*, That it shall be the duty of the said court or tribunal to charge the collectors with all blank licenses to keepers of billiard tables to them delivered, in a book to be kept by the clerk for that purpose; and at every term shall settle with their collector for licenses delivered as aforesaid, and not before settled and accounted for, and credit him with all blank licenses returned. And such collector shall stand chargeable for the amount of all licenses not returned; and the said court or tribunal shall cause their clerk to certify at each term, to the auditor of public accounts, the amount with which such collector shall so stand chargeable, and the auditor shall charge such collector with the amount. And the said collector shall, at the same time, settle with and pay to the clerk one dollar for each and every license not returned.

Grand jurors and officers, to give information of violations of this act.

Sec. 4. *Be it further enacted*, That it shall be the duty of all grand jurors, sheriffs, coroners, constables, judges, and justices of the peace, to give information to the attorney-general, or the circuit attorney prosecuting for the district, or to the grand jury of the proper county, of all violations of the second section of this act coming to their knowledge; and if any grand juror or officer as aforesaid shall neglect or refuse to give the information aforesaid, within six months after the same shall come to his knowledge, he shall forfeit and pay the sum of thirty dollars, to be recovered by action of debt or indictment, to the use of the state, in any court of competent jurisdiction.

Collectors to deliver list of licenses to grand jury.

Sec. 5. *Be it further enacted*, That the several collectors shall make out and deliver to each grand jury empanneled in his county, on the first day of their session, a list of all licenses granted by him under this act, and continuing in force; and if he fail so to do, he shall forfeit and pay the sum of one hundred dollars, to be recovered as other penalties under this act. And it shall be the duty of the several circuit courts to give this act in charge to each grand jury empanneled by them.

[*Approved, November 26, 1824.*]

BILLS OF EXCHANGE.

1st April, 1825.

AN ACT concerning Bills of Exchange.

Damages, on foreign bills of exchange duly protested.

20 per cent.

Sec. 1. *Be it enacted by the general assembly of the state of Missouri*, That when any foreign bill of exchange, which may be drawn for any sum of money, expressing that the value has been received, shall be duly presented for acceptance, or payment, and protested for non-acceptance or non-payment, the drawer or endorsers thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest from the time of non-acceptance or non-payment until paid, and twenty per centum, damages, in addition, together with costs and charges of protest.

On bills of exchange drawn on any place within U. S. and protested.

Damages 10 per cent.

Sec. 2. *Be it further enacted*, That if any bill of exchange, drawn upon any person out of this state, but within the United States or their territories, for the payment of money, and expressed to be for value received, shall be duly presented for acceptance or payment, and returned unpaid, with a legal protest for non-acceptance or non-payment, the drawer and endorsers thereof, and all concerned, having due notice of the dishonor of the bill, shall pay the said bill, with legal interest from the time of non-acceptance or non payment, together with costs and charges of protest, and ten per centum damages on the amount of such bill.

Bills drawn on any place within the state and protested.

Sec. 3. *Be it further enacted*, That if any bill of exchange, dated at any place in this state, and drawn on any person at any other place therein, for the payment of money, and expressed to be for value received, and payable on a certain day, or a certain number of days, weeks, or months, after sight, or after date, shall not on being presented to the person on whom it may be drawn, be accepted in writing, or being accepted in that manner, shall not be paid before the expiration of three days after it shall become due, the person to whom it is payable, or his agent or assigns, may cause the same to be protested by a notary public, or if there be no such notary public, by a justice of the peace, or any person in presence of two or more witnesses, for non-acceptance or non-payment; and the drawer or endorser, such protest being sent to him, or notice thereof in writing being given to him, or left at his usual abode, shall within twenty days after receiving such notice, pay the money mentioned therein, and the legal interest thereon, from the date of the protest; and costs of protest, and in default thereof, shall pay in addition thereto, four per centum damages on the amount of said bill.

Damages 4 per cent.

Liability of acceptor under the provisions of this act.

SEC. 4. *Be it further enacted*, That if any bill of exchange, drawn as herein before mentioned, shall be accepted, and the sum of money therein specified shall not be duly paid by the acceptors, according to the tenor and effect of the bill, and his acceptance thereof, such acceptor shall be liable to pay to the holder the principal, with like interest, damages and costs, as the drawer and endorsers of such bill would be liable to pay under the provisions of this act, in case such bill had been duly protested, and notice of the dishonor given to them.

Notice of dishonor, not required, where it is not required at common law.

SEC. 5. *Be it further enacted*, That nothing in this act shall be so construed as to require notice of non-acceptance or non payment, to be given, in any case where notice would not be required by the common law. This act shall take effect and be in force, from and after the first day of April next.

[*Approved*, *December* 22, 1824.].

BOATMEN.

14 Jan. 1825.

AN ACT concerning Boatmen.

Contracts to be specifically performed

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That all contracts and engagements entered into by any person or persons whomsoever, for the rowing or navigating of any boat or vessel of any description on the navigable waters within the jurisdiction of this state, shall be specifically performed according to the true intent and meaning thereof.

How and in what cases contracts may be in writing and registered.

SEC. 2. *Be it further enacted*, That every master or commander of any boat or vessel, bound on a voyage from any port or place within this state, may, before he proceed on such voyage, make an agreement in writing or in print with every boatman engaged or to be engaged on board such boat or vessel, in the navigation thereof, (except such as shall be apprentice or servant to himself or owners) declaring the voyage or voyages, the term or terms of time, and the wages for which such boatmen shall be engaged; which contract shall be acknowledged by the parties before some justice of the peace or notary public, and filed and recorded by some justice of the peace or notary public, in a book to be by him kept for that purpose; and the original, or a copy thereof, duly certified under the hand and seal of office of such notary public or justice of the peace, shall be received in evidence in any court of this state.

Memorandum of the time of rendering on board to be made.

Failure to render on board.

SEC. 3. *Be it further enacted*, That at the foot of every such contract, there shall be a memorandum in writing of the day and hour on which such boatman, who shall so engage and subscribe, shall render himself on board to begin the voyage agreed upon; and if any such boatman neglect to render himself on board the boat or vessel for which he has engaged, at the time mentioned in such memorandum, every such boatman shall forfeit one day's pay for every hour which he shall so neglect to render himself on board.

Misconduct of boatmen, how punished.

Proceedings.

SEC. 4. *Be it further enacted*, That if any boatman as aforesaid shall wholly neglect or refuse to render himself on board of such boat or vessel, or having rendered himself on board, shall afterwards desert, or shall misbehave himself, neglect or refuse to do his duty, quit the boat or vessel, or otherwise violate hs engagement, any justice of the peace shall, on complaint of the master or commander, or other person having charge of the boat or vessel, on oath or affirmation, issue his warrant, directed to any constable or other person specially deputed, commanding him to take the delinquent and bring him forthwith before such justice, who shall hear and determine the complaint in a summary manner, and shall have power and authority to discharge the delinquent (in which case he shall forfeit all wages due him) or cause him to be sent on board and placed in the custody of the master or commander,—and may, moreover, render judgment [against] him for any sum m not exceeding ninety dollars, or commit him to the common jail of the county for any time not exceeding thirty days, unless he will enter into a bond to the master or commander, with sufficient securities, to be approved of by the justice, in a sum of at least two hundred dollars, conditioned, that he will during the remainder of the voyage do his duty according to his contract.

Crew responsible for injuries to vessel and cargo

SEC. 5. *Be it further enacted*, That if any boat or vessel, or any part of her cargo, tackle, apparel or furniture, shall be lost, injured or destroyed, during any voyage, or while in port, through the neglect or default of the crew, the master or commander may have an action against such crew, or so many of them as can be found, and recover the value of the property so lost, injured or destroyed, before any justice of the peace where the sum claimed shall not exceed ninety dollars, and in any circuit court if they exceed that sum.

Remedy agt. master for ill-treatment, &c

Sec. 6. *Be it further enacted*, That if any boatman shall make complaint, before any justice of the peace, that any master or commander of any boat or vessel, in the navigation of which such boatman is engaged, has failed to supply him with necessary provisions, or treated him with unusual severity or cruelty, or has failed otherwise to perform his contract, it shall be the duty of such justice to issue a summons, directed to the constable or other person by him specially deputed to serve the same, requiring such master or commander to appear before him and answer the complaint; and if he finds it just, may discharge the complainant. And such boatman may recover against such master or commander the wages justly due him, according to the services rendered, notwithstanding the contract may be entire, in any court having competent jurisdiction; and may also have his action for any injury which he may have sustained by reason of the conduct or fault of the master or commander.

Commander not permitted to sell liquor, &c. to boatmen beyond a limited amount.

Sec. 7. *Be it further enacted*, That it shall not be lawful for the commander or owner of any boat or vessel to sell or barter any flour, biscuit, or other provisions to any boatman, whilst said boatman is in his said service and during the voyage; nor shall any charge made against such boatman for spirituous liquors, while employed or during his engagement, be recoverable or allowed, but at a reasonable rate; nor for any sum exceeding one tenth part of his wages, for the time in which the charges shall be made.

Boatmen committed to jail, master to pay weekly allowance.

Sec. 8. *Be it further enacted*, That when any boatman shall be committed to jail under the provisions of this act, the master or owner shall pay weekly, in advance, an allowance for the keeping and maintaining such boatman, at the rate of twenty-five cents per day; and in default of payment, the boatman shall be discharged.

Penalty for harboring or secreting boatmen.

Sec. 9. *Be it further enacted*, That if any person shall harbor or secrete any boatman belonging to any boat or vessel, knowing him to belong thereto, every such person, on conviction thereof before any court of competent jurisdiction, shall forfeit and pay ten dollars for every day which he shall secrete or harbor such boatman, to be recovered by the master or commander in an action of debt.

Debts contracted by registered boatmen, exceeding $5, not recoverable until voyage ended

Sec. 10. *Be it further enacted*, That no sum exceeding five dollars shall be recovered from any boatman, (whose contract is registered as aforesaid) by any person for any debt, contracted during the time such boatman shall actually belong to any boat, or vessel, until the voyage for which such boatman engaged, shall be ended.

Sec. 11. *Be it further enacted*, That if any person shall take any note, or other security in writing, from any boat-

Notes, &c. antedated, wholly void.

Penalty on persons taking them.

man, after he has entered into any contract as aforesaid, and the same be antedated, with intent thereby to stop the boatman from proceeding on his voyage, such note or other security shall be null and void, and the person taking the same, his aiders, and abettors, shall forfeit and pay, to the use of the person, prosecuting the same, double the sum specified in such note or security, to be recovered by action of debt, in any court of competent jurisdiction.

Boatman discharged from actions bro't on certain contracts.

Sec. 12. *Be it further enacted*, That if any person shall commence an action against any registered boatman, upon any demand, exceeding five dollars, and it shall appear that such contract was made after entering into his contract as boatman, or that the demand exhibited is antedated, or was entered into by collision or fraud, such boatman shall forthwith be discharged therefrom, saving however the remedy of the creditor against such boatman, after the term of his engagement expires.

Proceedings before J. P. under this act, regulated

Summary.

Proviso.

Sec. 13. *Be it further enacted*, That the proceedings to be had before a justice of the peace, under the provisions of this act, shall be conformed as near as circumstances will admit, to the course of proceeding prescribed, or which may be prescribed by law, in matters of a civil nature, before justices of the peace; and where the sum in controversy does not exceed twenty dollars, either party may require a jury, as in other cases; but in all cases under this act, proceedings shall be summary, and the justice shall proceed to the hearing, determination and execution, in the most speedy manner, that the nature of the case and justice will permit: *Provided*, That if upon the examination of any complaint made against a boatman, it shall appear that any part of the wages of such boatman is due and unpaid, no warrant to apprehend such boatman and send him on board, or subject him to the authority of the master or commander, shall be issued, until such arrearages are paid or tendered.

Appeal allowed to either party.

Effect of appeal.

Sec. 14. *Be it further enacted*, That if either party shall feel aggrieved by the judgment or decision of the justice of the peace, made under the provisions of this act, he may appeal to the circuit court, as in other cases of appeals from justices of the peace; but no such appeal shall operate to defeat or delay the execution of any warrant for placing the boatman into the custody of the master or commander, where such boatman is adjudged to an immediate performance of his contract.

This act to extend to certain contracts made out of the state.

Sec. 15. *Be it further enacted*, That the provisions of this law shall extend to all written contracts, made without the limits of this state, for the rowing or navigating of boats upon navigable waters within this state, or bounding thereupon whensoever any boat, concerning which such contract hath been made, and the hands thereof, are found within the jurisdiction of this state.

[*Approved, January* 14, 1825.]

BRIDGES.

14 Jan. 1825.

AN ACT to provide for building Bridges.

County court to determine what bridges shall be built and repaired at public expense.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That the county courts or tribunals transacting county business, in their respective counties, shall determine what bridges shall be built and maintained at the expense of the counties, and what ones by the several road districts: *Provided, however*, That in all cases where the estimated expense of a bridge shall exceed twenty-five dollars, it shall be built by the county. The said tribunal may order any bridge already built, or which shall hereafter be built by the county, to be attached to a road district, for the purpose of being kept in repair by such road district.

Public bridges erected under the order of the county court

Contract for, how to be made.

Oath of commissioner.

Notice of letting bridge.

Contractor to give bond.

Expenses of building bridges, how paid.

SEC. 2. *Be it further enacted*, That whenever the tribunal transacting county business, or a majority of them, shall be of opinion that a bridge is necessary, and that it shall be built at the expense of the county, they shall determine in what manner and of what materials the same shall be built, and shall appoint one of their members, or some other fit person, as a commissioner, to contract for the building of such bridge, and for the keeping the same in repair, if they shall judge proper, for any space of time not less than two nor more than four years. And the said commissioner, before he shall enter on the duties of his appointment, shall take an oath, before some judge or justice of the peace, truly and faithfully to perform the trust reposed in him, as such commissioner. He shall advertise the time and place for letting the said bridge, at three or more public places in the township where such bridge is to be built, at least twenty days prior to letting the same; and shall then let the same, by public outcry, to the lowest bidder; and shall take bond to himself and his successors in office, for the use of the county, with at least two good and sufficient householders as securities, in such penalty as he shall deem sufficient to cover all damages which may accrue from the breach of such contract. And the said tribunal may order the expenses of building such bridge to be paid out of any money in the county treasury, not otherwise appropriated; and when there shall not be money enough in the treasury to defray the expense of building any such bridge, it shall be lawful for the said tribunal to levy an additional county tax, to be called a bridge tax, not to exceed fifty per cent. upon the county tax, however, in any one year, which tax shall be levied in the same manner as other county levies.

Where one half of the expense is raised by individuals, bridges to be built.

SEC. 3. *Be it further enacted*, That whenever one half the estimated expense of building any bridge upon a county road shall be raised by individual subscription, it shall be the duty of the tribunal transacting county business forthwith to cause such bridge to be built, and to provide for the payment of the residue of the expense as is above directed.

Bridges on streams dividing counties, how erected and repaired.

SEC. 4. *Be it further enacted*, That when a bridge shall be necessary over any water course which divides one county from another, the tribunal transacting county business, of each county, shall unite in appointing a commissioner for the building and keeping in repair the said bridge; and the expenses thereof shall be defrayed by both counties, in proportion to the amount of the general tax of each, to be ascertained by the digest of the general tax taken next before the contract for building such bridge shall be made. And where one half the estimated expense of building any such bridge shall be raised by individual subscription as aforesaid, the said tribunal of each county shall forthwith unite to cause such bridge to be built, and shall provide for the payment of the residue of the expense of the said bridge, in the same proportion as is herein before directed.

How bridges shall be repaired.

SEC. 5. *Be it further enacted*, That whenever any public bridge shall require repairing, which by contract is to be kept in repair, it shall be the duty of the commissioner of such bridge to give notice thereof, in writing, to some one of the undertakers, or of their securities, stating the repairs necessary to be made, and requiring the same to be made within a reasonable time, to be set forth in the said notice, and if the same shall not be made within such time, such commissioner shall employ some other person forthwith to make such repairs, allowing therefor a reasonable price,—and may immediately thereafter proceed to collect the amount so paid, together with costs, before any court of competent jurisdiction, by action of debt founded on this statute.

Commissioner not to be contractor or security.

Compensation.

SEC. 6. *Be it further enacted*, That no commissioner shall become an undertaker for the building of the bridge of which he is commissioner, nor shall he become security for any person so undertaking. He shall be allowed one dollar per day, for each day necessarily spent in the discharge of the duties of his office, to be paid by the county.

Materials may be taken from adjoining lands

SEC. 7. *Be it further enacted*, That the commissioners, or other person or persons authorized to superintend the building of a bridge or bridges, in any county in this state, such superintendent shall have full and ample power and authority to take or cause to be taken from the adjoining lands, such quantity of rock and timber as may be necessary for the completion of any such bridge or bridges; and if any bridge or bridges shall be intended to be built by private subscription, across any creek or river where any public road shall cross the same, the person or persons, so intending to build such bridge or bridges, shall have the like liberty to take rock and timber for that purpose, from any land the property of this state for saline or seminary purposes, any law to the contrary notwithstanding: *Provided*, That where timber or rock as aforesaid shall be taken from lands the property of any individual, it shall be lawful for the county court to allow just compensation for the same, upon the return and trial of a writ of *ad quod damnum* for that purpose, if the jury to try said writ should assess damages.

Compensation to be allowed for materials.

How ascertained.

[*Approved*, *January* 14, 1825.]

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BUILDINGS.

19 Dec. 1821.

AN ACT for securing to mechanics and others, payment for their labor and materials in erecting any houses or other buildings in the state of Missouri.

Mechanics & others who furnish materials to have lien.

SECTION 1. *Be it enacted by the general assembly of the state of Missouri*, That artizans, builders, mechanics, and those who furnish materials for buildings, shall have a lien upon such materials furnished, and to work and labor done on houses and other edifices by them hereafter erected, in whole or in part, each artizan, builder, mechanic, and laborer, for his own work, and each of those who furnish materials, for so much as the said materials are worth or agreed to be paid for.

Account to be filed with clk. of the circuit court.

SEC. 2. *Be it further enacted*, That it shall be the duty of every person who wishes to avail himself of the benefit of this act, to file with the clerk of the circuit court of the county in which the building or buildings to be charged with the lien, is or are situated, and within one month after such demand shall have accrued, a just and true account of the demand justly due him after all just credits given, which is to be a lien upon such building or buildings, and shall verify the said account by his own oath or by the oath of some other person, and shall also file at the same time, a correct description of the property to be charged with

Property to be described.

Duty of clerk

His fee.

the said lien, and it shall be the duty of the clerk to make an abstract thereof, in a book to be by him kept for that purpose, containing the name of the person laying or imposing the lien, and of him against whom, or upon whose contract it is imposed, the amount of the said lien, and a description of the property to be charged, for which the said clerk shall be allowed to receive sixty-two and an half cents, and shall also receive the further sum of fifty cents, as a tax, to be accounted for as other tax upon process now is or hereafter may be.

Suit may be commenced.

Property how subject to execution.

Sec. 3. *Be it further enacted,* That whenever any person shall wish to proceed against any property upon which he shall have a lien by virtue of this act, he may commence his suit in the ordinary form, and shall have judgment against the original debtor for the amount that shall be found due to him, and shall have the liberty of taking his execution against such a proportionable part of the property charged with said lien, as his demand bears to the whole amount of the liens that are charged upon the said property under this act, which proportionable part shall be decided by the court, and also against other property of the defendant: *Provided however,* That no execution shall issue against the property charged with such lien, unless the defendant shall have owned or possessed the said property at the time of the commencement of the said suit, or unless a *scire facias* shall first have issued, and been served upon the owner or possessor of such property, requiring him, her, or them, to appear and shew cause why judgment should not be entered up and execution had against such property.

Proceedings, scire facias.

Sec. 4. *Be it further enacted,* That in all cases under this act, it shall be lawful for the plaintiff to proceed by *scire facias*, against the original debtor, and against all and every person or persons owning or possessing the property against which he wishes to proceed; but no judgment to be rendered on the said *scire facias* shall authorize the issuing of any execution, except against the property charged with the said lien, or such part thereof as the court shall direct.

Scire facias, how served.

Sec. 5. *Be it further enacted,* That the service of the *scire facias* shall be in the same manner as the service of a summons, except upon those defendants who cannot be found in the county where the proceedings are had, and are not residents of such county, and upon such defendants, the service shall be by affixing a copy of the *scire facias* upon the door of the building upon which the lien is charged, for six weeks at least before the return of the said *scire facias*.

Force of lien

Sec. 6. *Be it further enacted,* That no lien shall bind any building for a longer time than twelve months after the said building is finished, by virtue of this act, unless a suit shall have been brought on such lien, in the manner provided by the foregoing sections of this act.

Debt, which is a lien discharged, creditor to acknowledge satisfaction.

SEC. 7. *Be it further enacted*, That whenever any debt which is a lien upon any building, under and by virtue of this act, shall be paid and satisfied, it shall be the duty of the creditor, to go before some officer in the county, authorized to take the acknowledgment of deeds, and acknowledge satisfaction of the said lien; and such satisfaction being duly acknowledged and certified, shall be filed with the clerk of the circuit court, who shall thereupon enter satisfaction of such lien upon his record, in the same manner as he is directed by law to enter satisfaction of mortgages, and shall be allowed the same fees therefor as on mortgages, to be paid by the creditor at the time: and if any creditor refuse or neglect to acknowledge such satisfaction, after payment and reasonable request, he shall forfeit the amount of the lien which he claimed, to be recovered in an action of debt, in any court of competent jurisdiction, with costs of suit.

Penalty for neglect.

Creditor, filing an erroneous acct. to forfeit the amount of such lien.

SEC. 8. *Be it further enacted*, That if any person who shall avail himself of the benefit of this act, shall file with the clerk of the circuit court of the county in which the building or buildings to be charged with the lien is situated, an account for a larger or greater sum of money than is justly and truly due to him after just credits given, and which by the provisions of this act shall operate as a lien upon such buildings, he, she, or they, who shall have so filed such account, shall forfeit the amount of the lien, which he,she or they so claimed; to be recovered by action of debt, in the name and to the use of the person against whom such account has been so filed, in any court of competent jurisdiction with costs of suit.

Land on which house is built, subject also to lien.

SEC. 9. *Be it further enacted*, That the land upon which any buildings shall be erected, together with a convenient space round the same, not exceeding five hundred square feet clear of the building, shall be also subjected to the liens which are to be had under and by virtue of this act: *Provided*, That the said land shall have been, at the time of erecting the said buildings, the property of the person who shall have caused the same to have been so erected.—This act shall take effect and be in force from and after the first day of April next.

[*Approved*, 19*th December*, 1821.]

CENSUS.

18 Dec 1824.

AN ACT to provide for taking the Census of the People of Missouri.*

*See constitution, art 3, sec. 4; *ante* pa. 44.

Enumeration of inhabitants to be made, how.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That it shall be the duty of the several sheriffs of each county in this state, to take an enumeration of the inhabitants who shall be residents within their respective counties, once in every four years, distinguishing the free white males from the free white females, and the free persons of color from slaves, and those bound to service for a term of years; and shall designate, in separate columns, those under ten years of age, those of ten and under eighteen, those of eighteen and under twenty-one years, those of twenty-one and under forty-five years, and those of forty-five years and upwards.

To be commenced 1st Sept 1825,& every 4th year.

Return.

Oath.

SEC. 2. *Be it further enacted*, That each of the said sheriffs shall commence taking the aforesaid enumeration on the first day of September one thousand eight hundred and twenty-eight, and on the first day of September in every fourth year thereafter, and shall complete the same, and make return thereof to the office of the secretary of state, on or before the first Monday in November of the same year. And it shall be the duty of the governor for the time being, to cause an abstract of the said enumeration to be laid before the general assembly the first week of the succeeding session. And the said sheriffs, or their deputies, shall, before entering upon the duties enjoined by this act, take an oath or affirmation (as the case may be) before some judge or justice of the peace, well and truly and faithfully to do and perform all and singular the said duties herein enjoined, according to the best of their skill, judgment, and abilities; a certificate of the said oath or affirmation shall be granted by the said judge or justice to the said sheriff or his deputies, and by him returned to the office of the clerk of the tribunal for the transaction of county business.

Number in each township to be designated.

SEC. 3. *Be it further enacted*, That the said sheriffs shall specify the number of inhabitants in each township of their respective counties, agreeably to the provisions of this act.

Compensation of shff. $2 per day.

Not exceeding 40 days.

SEC. 4. *Be it further enacted*, That the said sheriffs shall severally be allowed, out of the state treasury, two dollars for every day he or his deputy shall have been employed in taking the enumeration aforesaid—the time in which he shall have been so employed to be settled by the said tribunal for the transaction of county business in the respective counties: *Provided*, That no sheriff shall be allowed for more than forty days, at the discretion of the said tribunal.

SEC. 5. *Be it further enacted*, That any sheriff failing or neglecting to perform the duties prescribed by this act, shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt in the circuit court of the county where such neglect of duty shall have taken place.

Accounts to be adjusted and certified.

SEC. 6. *Be it further enacted*, That the several sheriffs, after having performed the duties assigned them by this act, shall obtain a certificate from the clerk of the tribunal for the transaction of county business, stating the amount so allowed by the said tribunal for taking such enumeration; which certificate it shall be the duty of the auditor of public accounts to audit, and issue his warrant to the treasurer accordingly.

This act shall take effect and be in force from and after the passage thereof.

[*Approved, December* 18, 1824.]

CITY OF ST. LOUIS.

CHAPTER I.

9th Dec. 1822 AN ACT to incorporate the inhabitants of the town of St. Louis.

Boundaries of the city.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That all that district of country contained within the following limits, to wit: beginning at a point in the middle of the main channel of the Mississippi river, due east of the southern end of a bridge across Mill creek at the lower end of the town of St. Louis; thence due west to a point at which the western line of seventh street, extended southwardly, will intersect the same; thence northwardly along the western side of seventh street, and continuing in that course to a point due west of the northern side of Roy's tower; thence due east to the middle of the main channel of the river Mississippi; thence with the middle of the main channel of the said river to the beginning,—shall be and is hereby erected into a city, by the name of the city of St. Louis; and the inhabitants thereof shall be and are hereby constituted a body politic and corporate, by the name and style of "the mayor, aldermen and citizens of the city of St. Louis," and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued, implead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions and matters whatsoever; may grant, purchase, receive and hold property, real and personal, within the said city, and no other, (burial grounds excepted) and may lease, sell and dispose of the same for

Body politic.

Style.

the benefit of the city; and may do all other acts, as natural persons; may have a common seal, and break and alter the same at pleasure.

Sec. 2. *Be it further enacted*, That the corporate powers and duties of said city shall be vested in a mayor and a board of aldermen, who shall be chosen and appointed as hereinafter directed.

Corporate powers vested in Mayor and Aldermen.

Sec. 3. *Be it further enacted*, That the board of aldermen shall consist of nine members,—for the election of whom the city shall be divided into convenient wards, which may be altered from time to time, and new wards established, as the convenience of the inhabitants may require, and the aldermen shall be appointed among the several wards according to the number of qualified electors in each.

Nine Aldermen.

How appointed.

Sec. 4. *Be it further enacted*, That the aldermen shall be chosen by the qualified electors for the term of one year; shall be at least twenty-one years of age, and citizens of the United States, and inhabitants of the said city for one year next preceding their election; and shall each possess a freehold estate within the limits of the said city. And whenever there shall be a tie in the election of aldermen, it shall be determined by the judges of the election of the ward in which it shall happen, by lot; and all vacancies shall be filled by election as aforesaid, in such manner as shall be provided by ordinance.

Tenure of office.

Qualifications

In case of a tie, judges of election to determine by lot.

Sec. 5. *Be it further enacted*, That the board of aldermen shall appoint their president and all other officers of the board; shall judge of the qualifications, elections and returns of their own members; a majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as the board may provide; they may determine the rules of proceeding, punish their members for disorderly conduct, and by the concurrence of two thirds of the whole number elected, expel a member, but not a second time for the same cause; they shall, at the desire of any member, cause the yeas and nays on any question to be entered on the journals.

Powers and duties of the board in transacting business.

Sec. 6. *Be it further enacted*, That the stated meetings of the board of aldermen shall be on the first Mondays of March, June, September, and December, in every year; but they may be convened at other times, on extraordinary occasions, by the mayor: *Provided*, That the mayor and board of aldermen may, by ordinance, alter the times of holding stated meetings.

Stated meetings.

Sec. 7. *Be it further enacted*, That the aldermen shall be

Aldermen vested with powers of justices of the peace.

ex-officio conservators of the peace, throughout the city, and shall, within the same, have all the powers and jurisdiction now vested in justices of the peace, in matters of a criminal nature, and shall exercise and perform all powers and duties which may be vested in, or required of them by ordinance.

Mayor, how & by whom to be elected

SEC. 8. *Be it further enacted*, That the mayor shall be elected by the qualified electors of the city, shall hold his office for the term of one year, and until a successor is duly elected and qualified; when two or more persons shall have an equal number of votes for mayor, or any election for mayor shall be contested, it shall be determined by the board of aldermen.

Qualifications.
*See post, chap.2, sec.1.

SEC. 9. *Be it further enacted, That the mayor shall be at least thirty years of age, a citizen of the United States, shall have resided within the city for at least two years next preceding his election, and be otherwise qualified as in the case of aldermen:* And provided*, That no person shall be eligible to the office of mayor, who may, at the time of his election, hold any office of honor, trust, or profit, under this state or the United States.

Powers and duties of mayor.

SEC. 10. *Be it further enacted*, That the mayor shall nominate, and by and with the concurrence of the board of aldermen, appoint all officers within the city, which are not ordered by law or ordinance to be otherwise appointed; he shall take care that the laws of the state, and the ordinances of the corporation, are duly enforced, respected, and observed, within the said city; he shall have power, with the consent of the board of aldermen, to remove from office, any persons holding offices created by ordinance; he may remit fines and forfeitures, and grant reprieves and pardons, in any case arising under the ordinance of the corporation; he shall be a conservator of the peace within the limits of the city; he shall have power to fill all vacancies which may happen in any office (other than that of aldermen) until the end of the session of the board of aldermen, which shall next happen after the vacancy shall occur; he shall from time to time give to the board of aldermen, information relative to the state of the city, and shall recommend to their consideration, such measures as he shall deem expedient; he may, on extraordinary occasions, convene the board of aldermen, by proclamation, stating to them, when assembled, the object for which they were convened; he shall receive such compensation for his services as may be provided by ordinance.

Compensation fixed by ordinance

In case of vacancy, president of the

SEC. 11. *Be it further enacted*, That when any vacancy shall happen in the office of mayor, by death, resignation, removal or absence from the city, removal from office, refusal to qualify, or otherwise,—the president of the board of aldermen, for the time being, shall exercise the office of mayor until such vacancy shall be filled; and during the time he shall so exercise such office, shall receive the same compensation as the mayor would have been entitled to; and in case of vacancy as aforesaid, other than a temporary absence, the person exercising the office of mayor, shall cause a new election to be held, giving ten days notice thereof by proclamation.

board to act as mayor.

And order a new election

Powers and duties of the mayor and board of aldermen.

*See this head, chap. 2, sec. 2.

Sec. 12. *Be it further enacted*, That the mayor and board of aldermen, shall have power, by ordinance, to levy and collect taxes upon real and personal property, within the city, *not exceeding one half of one per centum upon the assessed value thereof,* except as herein after excepted; to make regulations to prevent the introduction of contagious diseases; to make quarantine laws for that purpose, and enforce the same within ten miles of the city, and within the jurisdiction of the state; to make regulations to secure the general health of the inhabitants; to prevent and remove nuisances*; to establish night watches and patroles, erect lamps in the streets, and lighting the same; to improve and preserve the navigation of the Mississippi, within the city; to erect, repair and regulate public wharves and docks; to regulate the erecting and the rates of wharfage at private wharves; to regulate the stationing, anchorage and mooring of vessels; to provide for licensing, taxing and regulating auctions, retailers, ordinaries and taverns, billiard tables, hackney carriages, wagons, carts, drays, pawnbrokers, venders of lottery tickets, money changers, hawkers and pedlars, theatrical and other shows and amusements; to restrain and prohibit tippling houses, gaming, gaming houses, bawdy houses, and other disorderly houses; to establish and repair bridges; to establish and regulate markets; to open and keep in repair, streets, avenues, lanes, alleys, drains, and sewers, and keep the same clean; to provide the city with water; to provide for safe keeping standard weights and measures, for the regulation of weights and measures to be used in said city; to regulate the cleaning of chimneys, and fix the fees therefor; to provide for the prevention and extinguishment of fires; to regulate the size of bricks to be made and used within the city; to provide for the inspection of lumber, and other building materials, to be sold or used therein; to regulate and order partition and parapet walls, and partition fences; to regulate the inspection of butter, lard, wood, and the weight and quality of bread, the storage of gun powder, tar, pitch, rosin, hemp, cotton, and other combustible materials; to erect pumps in the streets, for the convenience of the inhabitants; to regulate the police of the city; to regulate the election of city officers, and fix their compensation; and from time to time, to pass such ordinances, to carry into effect the objects of this act, and the powers hereby granted, as the good of the inhabitants may require; and to impose and appropriate fines and forfeitures for the breach of any ordinance, and provide for the collection thereof: *Provided*, That no tax shall be laid upon the wearing apparel, or necessary tools or implements of any person, used in carrying on his trade, nor shall the same be subject to distress or sale for tax.

Special tax to be levied for paving streets.

SEC. 13. *Be it further enacted*, That upon the application of the holders of two thirds of the front of the lots on any street, or part of a street, it shall be lawful for the mayor and aldermen to levy and collect a special tax on the holders of the lots on said street, or part of a street, according to their respective fronts, for the purpose of paving such street or part of a street; and upon a similar application, to levy a tax in the same manner, for the purpose of lighting the streets, or erecting lamps therein.

Streets may be regulated and widened

Persons injured thereby, to be compensated

Damages to be ascertained by a jury

Jury to report to the mayor.

SEC. 14. *Be it further enacted*, That the mayor and aldermen, shall have power to regulate, pave and improve, the streets, avenues, lanes and alleys, within the limits of the city; and to extend, open and widen, streets, avenues, lanes and alleys; making the person or persons injured thereby, adequate compensation therefor; to ascertain which, the mayor shall in all such cases, cause to be summoned, twelve good and lawful men, freeholders, inhabitants of said city, not directly interested, who (being first duly sworn for that purpose) shall enquire into, and take into consideration, as well the benefits as the inconveniences which may accrue, and estimate and assess the damages which would be sustained by reason of the opening, extension, or widening, of any street, avenue, lane or alley, and shall moreover, estimate the amount which other persons will be benefitted thereby, and shall contribute towards compensating the person injured; all of which shall be returned to the mayor, under their hands and seals; and the person or persons who shall be benefitted, and so assessed, shall pay the same, in such manner as shall be provided for by ordinance, and the residue, if any, shall be paid out of the city treasury.

Bills passed by the board to be presented to the mayor for his approval.

SEC. 15. *Be it further enacted*, That every bill which shall have been passed by the board of aldermen, shall before it becomes a law, be presented to the mayor for his approbation; if he approve, he shall sign it, if not, he shall return it, with his objections to the board, and they shall reconsider the same, and if after such reconsideration, a majority of the whole number elected, shall pass the bill, it shall become a law; in all such cases, the yeas and nays shall be entered on the journals; if any bill shall not be returned to the board within three days after it shall have been delivered to the mayor, as aforesaid, it shall become a law, in the same manner as if he had approved it.

SEC. 16. *Be it further enacted*, That the style of the laws of the said corporation, shall be, "Be it ordained by the Mayor and board of Aldermen, of the city of St. Louis;" and all ordinances shall within one month after they are passed, be published in some newspaper printed in said city.

Style of the laws.

Ordinances to be published.

SEC. 17. *Be it further enacted*, That the mayor shall nominate, and by and with the advice and consent of the board of aldermen appoint a register of the city, who shall hold his office for the term of one year, unless sooner removed; who, before he enters upon the duties of his office, shall take and subscribe the oath hereinafter prescribed,—and shall moreover give bond, with sufficient security, to be approved of by the mayor, condiitioned for the faithful discharge of the duties of his office. And it shall be his duty to keep a register of all the official acts of the mayor, and when necessary shall attest them; he shall perform the duties of clerk to the board of aldermen when in session; he shall keep a book or books, wherein shall be entered all the proceedings of the board, which book shall at all proper times be open to the inspection of the inhabitants of the city; and he shall keep and preserve in his office, all records, public papers and documents belonging to the city; and shall perform such other duties as shall be enjoined on him by ordinance.

Register to be appointed

Tenure of office

To take oath & give bond and security.

His duty.

SEC. 18. *Be it further enacted*, That the mayor and each of the aldermen, and every other officer of the corporation, shall, before entering on the duties of his office, take an oath or affirmation, before some judge or justice of the peace, to support the constitution of the United States and of this state, and faithfully to demean himself in office.

All officers to take oath.

SEC. 19. *Be it further enacted*, That all property, real and personal, heretofore belonging to the inhabitants of the town of St. Louis, or the trustees thereof, in their corporate capacity, shall be, and is hereby declared to be vested in the corporation; and all suits commenced for and on behalf of the said trustees, shall be prosecuted to judgment and execution, as if this act had not passed; and all moneys arising therefrom, and all fines, penalties and forfeitures accruing to the said trustees, shall be paid to the mayor for the use of the city; and all ordinances now in force shall remain in force as ordinances of the said city, until altered, modified or repealed by the said mayor

Property held by the inhabitants or trustees of town of St. Louis, in their corporate capacity, vested in the corporation. Fines, &c accruing to the trustees to be paid to mayor.

and board of aldermen; all actions, fines, penalties, forfeitures, which shall have accrued or may accrue to the town of St. Louis, shall be vested in, and be prosecuted for, in the name of the corporation created by this act.

Gen. election when held.

SEC. 20. *Be it further enacted*, That a general election for the officers of the corporation shall be held on the first Monday of April in each and every year, in the several wards of the city, in such manner as the mayor and aldermen may by ordinance provide.

Qualifications of voters.
To vote by ballot
*See this head, chap 2, sec. 3.

SEC. 21. *Be it further enacted*, That *all free white male persons of the age of twenty-one years, and who shall have paid a city tax, shall be entitled to vote at all elections for city officers, and at all such elections the vote shall be by ballot.**

City constable to be appointed.
To take an oath and give bond.
Bond, to be recorded in the register's office.
His powers and duties.

SEC. 22. *Be it further enacted*, That it shall be the duty of the mayor to nominate, and by and with the advice and consent of the board of aldermen appoint a city constable, who shall, before entering on the discharge of the duties of his office, take the oath of office by this act prescribed, and enter into bond to the said corporation, with sufficient security, to be approved of by the mayor, conditioned for the faithful discharge of the duties of his office; which bond shall be deposited and recorded in the register's office. And the said constable shall possess the same powers, and perform the same duties, within the said city, as the constables in the different townships possess in their respective townships; and shall, moreover, execute and return all process which may be issued by the mayor or any alderman, and such other duties as shall be prescribed by ordinance, and shall be entitled to the same compensation as sheriffs and constables in like cases.

First election for mayor & aldermen, where held.
By whom & how to be conducted.
Who qualified to vote.

SEC. 23. *Be it further enacted*, That the first election for mayor and aldermen shall be held and conducted by the trustees of the town of St. Louis, or any two of them, at the office of the register of said town, which election shall be conducted according to the existing laws of the state regulating elections; and the said trustees, or any two of them, shall make out and deliver to each person elected a certificate thereof; and the persons so elected shall take and subscribe the oath of office before some judge or justice of the peace,—which being endorsed on such certificate, shall be certified by such judge or justice; and at such first election, all persons (otherwise qualified) who have paid a corporation tax in the town of St. Louis, shall be entitled to a vote.

This act not to take effect until the provisions are accepted by inhabitants.

SEC. 24. *Be it further enacted*, That the foregoing provisions of this act shall take effect as soon as they shall be accepted by the inhabitants of said town, and not before, in manner following, that is to say: An election shall be held on the first Monday of March next, by the trustees of said town, or a majority of them, at the office of the register of said town, at which all free white male persons (otherwise qualified) who have paid a corporation tax to the town of St. Louis, and who reside within the limits prescribed in the first section of this act, shall be entitled to vote; and at the said election the voters shall vote by ballot "for or against the city charter," and if a majority of all the votes given shall be for the city charter, then the said board of trustees shall determine on what day the first election for city officers shall be held, which shall not be more than two months nor less than three weeks after the acceptance of the charter, and shall cause a notice thereof to be published in some newspaper printed in said town, for at least two weeks before the day appointed for such election; but if the charter shall not be accepted as aforesaid, the said trustees may, from time to time, whenever they shall be petitioned to that effect by at least one hundred householders residing within the limits aforesaid, cause an election to be held as aforesaid, until the charter shall be accepted, giving at least two weeks previous notice of such election, by publication in some newspaper printed in said town; and when the charter shall be accepted as aforesaid, they shall proceed as herein before provided in case of the acceptance of the charter; and the city officers who shall be elected at the first election shall continue in office until the first Monday of April then next following, and until their successors are duly elected and qualified: *Provided*, That the general assembly may, at any time, repeal, alter, amend or modify this act at pleasure. [*Approved, December 9, 1822.*]

Election to be held for that purpose

When accepted, trustees to order an election for city officers, and give notice.

* * *

CHAPTER II.

AN ACT supplementary to an Act entitled "An Act to incorporate the inhabitants of the town of St. Louis."

19 Feb.1825.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That the mayor of the city shall be at least thirty years of age, a citizen of the United States, shall have resided within the city for at least two years preceding his election, and be otherwise qualified as in the case of aldermen.*

Qualification of mayor.

*See chap 1, supra. sec 9.

SEC. 2. *Be it further enacted*, That the mayor and board of aldermen shall have power, by ordinance, to levy and cause to be collected, in the city, such tax as shall from time to time be necessary for the purpose of the corporation, on all property and persons made taxable by law for

Corporation may levy taxes and license ferries.

*See also, act supra. sec. 12

state purposes,* not exceeding in any one year the rates by law on the same objects for state purposes; and shall have power, by ordinance, to license and regulate ferries within the limits of the city.

Assessor to be elected—his qualification and duties.

SEC. 3. *Be it further enacted*, That at each general election for the officers of the city, there shall be elected an assessor for the corporation, who shall at the time of his election possess the same qualifications as are required in the case of aldermen of the city; and the duties of assessor shall be prescribed by the ordinances of the city.

Qualification of voters for city officers

Vote by ballot

†See act supra. sec 21.

SEC. 4. *Be it further enacted*, That all free white male persons of the age of twenty-one years, who shall have paid a city tax, and who shall have resided within the city for twelve months next preceding the election, and all free white male persons, residents of this state, of twenty-one years of age, who shall own or possess any real estate within the limits of the city, and who shall have paid a city tax therefor, shall be entitled to vote at all elections for city officers; and at all such elections the vote shall be by ballot.†

Property sold for city taxes, may be redeemed.

SEC. 5. *Be it further enacted*, That when any real estate in this city shall be advertised for sale, or may be or shall have been sold, by the authority of the corporation, the owner or owners thereof may redeem the same, in the same manner and under the same regulations as are provided in cases of real estate advertised for sale, or sold for taxes, under the authority of this state.

List of receipts and expenditures to be annually published

SEC. 6. *Be it further enacted*, That it shall be the duty of the mayor and board of aldermen, and they are hereby required, to cause to be published annually in some newspaper printed in the city, a full and complete statement of all moneys received and expended by the corporation during the preceding year, and on what account received and expended.

Annual appropriation for salaries not to exceed $2000.

Compensation of mayor

SEC. 7. *Be it further enacted*, That it shall not be lawful for the mayor and aldermen of the said city to appropriate, annually, more than the sum of two thousand dollars for the payment of the salaries of the mayor, and other officers appointed by the said corporation; and the said mayor shall receive from said corporation, for his services, a sum not exceeding three hundred dollars per annum.

Fire companies may be established.

SEC. 8. *Be it further enacted*, That the mayor and board of aldermen shall have power to organize and establish fire companies in the city, and the members thereof shall be exempt from performing militia duty in times of peace.

Jurisdiction of mayor and aldermen.

SEC. 9. *Be it further enacted*, That the mayor, and each alderman and justice of the peace within the city, shall have jurisdiction of all cases arising under the act of incorporation, under this act, and under all ordinances of the city, subject, however, to an appeal or *certiorari*, in all cases above the sum of five dollars, to the circuit court of St. Louis county; and such appeals and *certioraris* shall be granted and taken, in the same manner as appeals and *certioraris* are granted and taken from justices of the peace to the circuit court.

Repeal.

SEC. 10. *Be it further enacted*, That all such parts of the act, to which this is a supplement, as are contrary to or inconsistent with the provisions of this act, be and the same are hereby repealed.

This act shall take effect and be in force from and after the passage thereof.

[*Approved, February* 19, 1825.]

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CLERKS.

12 Feb. 1825.

AN ACT to provide for the appointment of Clerks of court and other tribunals.

Clerks, how appointed, and term of service.

SEC. 1. *Be it enacted by the general assembly of the state of Missouri*, That it shall be the duty of the several courts of law and equity, all county courts, and all other tribunals, (the probate court excepted) now established, or which may hereafter be established, in term time, or a majority of the judges or members thereof, in vacation, to appoint some suitable person, of not less than twenty-one years of age, to act as clerk of their respective courts; who shall be commissioned by the governor, and hold their office during good behavior:* *Provided however*, that this act shall not be so construed as to prevent the judge of probate from employing a clerk at his own expense.

*Constitution, art 5, sec. 15; ante pa. 55.

Bond to be given.

SEC. 2. *Be it further enacted*, That it shall be the duty of each clerk, appointed as aforesaid, before he enters upon the discharge of the duties of his office, or be commissioned, to enter into bond, in such sum and with such securities as the said court or tribunal appointing him, or a majority of the judges or members thereof, shall prescribe and approve; conditioned, that he will faithfully perform all the duties of his office, which are or shall be prescribed by law; that he will duly account for and pay over according to law, all moneys which may come to his hands in virtue of his office; and that he, his executors or administrators, will deliver to his successor, whole, safe, and undefaced, all books, records, papers, seals, apparatus, and furniture, belonging or appertaining to his office: and the certificate of the appointment of such clerk, and his bond, shall be deposited in the office of secretary of state, with

Conditions.

Bond deposited in office of secretary of state.

the approval of the judges thereon endorsed; whereupon such person shall be commissioned, according to his appointment; but before entering upon the duties of his office, he shall take an oath or affirmation, to be endorsed on his commission, that he will support the constitution of the United States and of this state, and faithfully demean himself in office; which commission and oath shall be recorded in the office of the recorder of the county in which such clerk's office is required to be kept.

Oath of office and commission.

SEC. 3. *Be it further enacted*, That the several courts and tribunals aforesaid, once in every four years, shall require their clerks to enter into new bonds, with security as aforesaid; and if, at any time whatever, any court or tribunal aforesaid, shall be satisfied that any security in any bond of their clerk, is insufficient, or in danger of becoming insufficient, or that the penalty of such bond is not large enough, they shall require their clerk to enter into a new bond, with sufficient security; which bond, if given, shall be deposited in the office of secretary of state, as aforesaid; and if any such clerk shall not give such bond, within thirty days after he is thereto required by the court, his office shall be vacated and a successor appointed.

New bonds to be given every 4 years or oftener, if required.

Failure, to renew bond

SEC. 4. *Be it further enacted*, That all bonds of clerks, deposited in the office of secretary of state, according to the provisions of this act, shall be by him recorded in a well bound book, to be by him provided and carefully preserved; and a copy of such bond, or of the record thereof, duly certified, under the seal of the secretary of state, shall be received in evidence, in any court, without further proof of the execution thereof, and shall have the like effect as the original, to all intents and purposes whatsoever.

Bonds to be recorded.

Copies, evidence.

SEC. 5. *Be it further enacted*, That each clerk appointed as aforesaid, shall (where it has not already been done) procure a seal, purporting to be the seal of the court or tribunal of which he is clerk, with such emblems and devices as the court or tribunal shall direct, and a screw and other necessary apparatus for impressing such seal;*—and shall provide, and safely and securely keep and preserve, suitable books, furniture, and other necessaries, for their respective offices, and keep regular and faithful accounts thereof; and the courts respectively shall audit and settle such accounts, and allow (in their direction) such sums as shall be reasonable, for their expenditures, under the provisions of this section; and all such allowances made to the clerks of the supreme court, shall be paid out of the state treasury; and all others out of the county treasury.

Books, seal and apparatus to be provided.

*See also title courts, chap.1.sec.15

Expenses, how paid.

SEC. 6. *Be it further enacted*, That the clerks of the sev-

Offices where to be kept.

eral courts and tribunals aforesaid, shall keep their offices at the place at which their respective courts are required to hold their sessions; but such courts and tribunals, may, in their discretion, authorize them to be kept at any place not exceeding one quarter of a mile from the place aforesaid; and the said clerks shall keep the records, papers, seals, furniture, and apparatus, belonging to their respective offices, and shall transact their business at the places aforesaid; but in case of danger from an invading enemy, the several clerks shall have power to remove their records, papers, and other things appertaining to their office, to some place of security until such danger shall cease.

Duties in keeping records.

Index. Writs, &c.

SEC. 7. *Be it further enacted*, That it shall be the duty of such clerk, seasonably to record the decrees, judgments, rules, orders, and other proceedings, of their respective courts or tribunals, and make out and keep a complete alphabetical index thereto; to issue and attest all writs, process, and subpœnas for witnesses, when required by law, and affix the seal of office thereto, (if there be one, and if not, his private seal;) to keep a full, true, and perfect account of all moneys coming to his hands and accruing to the county or state, on account of taxes, fines, or otherwise; and to make settlements thereof, with their respective courts, at each stated term, and pay over all balances, as directed by law; and shall do and perform all other duties which may be enjoined on him by law.

May appoint deputies.

SEC. 8. *Be it further enacted*, That the several clerks aforesaid, shall have power each to appoint one or more deputies, with the approbation of their respective courts or tribunals, who shall possess the same qualifications, and take the like oaths as their principals, and shall have power and authority (in the name of their principals) to do and perform the several acts and duties required of their principals; but all clerks shall be responsible for the conduct of their deputies, as for their own act.

What shall be deemed misdemeanor.

SEC. 9. *Be it further enacted*, That if any of the clerks aforesaid, shall knowingly and willingly do any act or thing, contrary to the duties of his office, as prescribed by law, or shall knowingly and willingly, omit or refuse to perform any act, thing, service, or duty, required of him by the laws of this state, he shall be deemed guilty of misdemeanor in office, and on conviction thereof shall be removed from office.

Proceedings for misdemeanor.

See constitution, art. 6, sec, 15; p.56,

SEC. 10. *Be it further enacted*, That when any court or tribunal aforesaid, or a majority of the judges or members thereof, in vacation, shall have good cause to believe, either from their own knowledge, or from the information of others, given on oath or affirmation, that their clerk has been guilty of a misdemeanor in office, they shall cause notice thereof to be given to the attorney general, or circuit attorney, prosecuting in the district, stating the charges exhibited against such clerk, and requiring him to prosecute the same; and such court may, moreover, suspend such clerk from office, until trial thereof can be had, and shall appoint clerks *pro tempore*, as often as necessary; who shall possess the same qualifications, take the like oath, give the like bond, as herein before required of clerks; and shall possess the like powers, perform the like duties, and be entitled to the same fees, for their services, for the time, as the said clerks.

Clerk pro tem.

Proceedings in making out and prosecuting charges for misdemeanor.

SEC. 11. *Be it further enacted*, That whenever the attorney general, or circuit attorney, shall be required to prosecute charges against any clerk as aforesaid, he shall make shall make out charges, in due form, against such clerk, and cause a copy thereof to be served on him, together with a notice requiring him to appear before the supreme court, on some day in term, (to be specified in such notice) and answer the charges; which notice, and a copy of the charges, shall be delivered to such clerk, fifteen days at least before the day so appointed; and the attorney general or circuit attorney, aforesaid, shall file such charges accordingly, and cause witnesses to be summoned to support the same, and shall prosecute such charges against such clerk, with all convenient speed; and the person against whom such charges are exhibited, shall appear and plead, at the same term in which the charges are filed, unless the supreme court shall give further time to plead.

On conviction, judgt of removal from office & fine.

SEC. 12. *Be it further enacted*, That if any person against whom charges are exhibited as aforesaid, shall be found or adjudged guilty of any misdemeanor in office, it shall be lawful for the said supreme court to give judgment that such person be removed from his office of clerk as aforesaid, and to fine such person, in the discretion of the court, in any sum not exceeding one thousand dollars, to the use of the county in which he was clerk; or, if clerk of the supreme court, to the use of the state; and that he pay the costs of prosecution; but if he should not be adjudged or found guilty, as aforesaid, the court shall give judgment that he be reinstated, and that the county of which he is clerk, or if clerk of the supreme court, the state, pay the costs.

Acquittal.

Proceedings, in case of death, resignation, &c.

SEC. 13. *Be it further enacted*, That if any clerk resign or be removed from office, he, or (if he die) his executors or administrators, shall deliver to his successor in office, as soon as appointed, all records, books, papers, dockets, files, seals, furniture and other things, belonging to his office;

and such successor shall take the same into his custody, accordingly. And it shall moreover be the duty of any person who shall resign or be removed from office, or the executors or administrators of any clerk who shall die, to render to the court of which he was clerk, at the next term which shall happen after such death, resignation or removal, a full, true and perfect account, on oath or affirmation, of all moneys by him received, in virtue of his said office, and not before accounted for; and shall settle with such court, in the same manner as if he were still in office, according to the order of the court; and the better to enable them to state such accounts, they shall have access to the office so vacated, and to the records, books, papers, and files therein, so far as may be necessary, for the purposes aforesaid; and the court may compel such settlements, and enforce the payment of any balance, by attachment.

[*Approved, February* 12, 1825.]

COMMONS.

AN ACT concerning Commons.

Dec.22,1824.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri,* That where any city, town or village, in this state, hath a common annexed to it, the trustees or body corporate of the said city, town or village, may regulate the enjoyment of said commons, and may pass any by-law which to them shall seem proper for that purpose; they may impose penalties, not exceeding fifty dollars for any one offence against their by-laws; they may punish for any unnecessary waste or destruction of timber, and may prohibit the cutting of timber within prescribed limits; they may lease the said commons, or any part thereof, reserving a yearly rent which shall be appropriated by the trustees or body corporate for the benefit of the commoners, in such way as they shall judge will most conduce to the general good,—but they shall never make any appropriation of their funds in advance; they may direct the enclosure of the commons, or any part thereof, and may partition the same among the commoners, from year to year, as they shall judge proper; they shall account to their successors in office for all moneys which may have come to their hands while in office, and shall pay over the balance which may remain in their hands unexpended; they may sue and be sued, as other corporations, by such name and description as they shall give themselves in the transaction of their business; they may prosecute for all trespasses upon the said commons, for the use of the

Corporate authority of towns may regulate commons.

To account with their successors for moneys.

May sue for trespass, &c.

If no corporation, or they fail to sue, lot holder may sue.

city, town or village to which the common belongs; and if the said trustees or body corporate shall fail or neglect to prosecute for any trespass as aforesaid for one month after being notified thereof, or if there are no trustees or body corporate to such city, town or village, any inhabitant, being a lotholder of such city, town or village, may bring and support an action of trespass in his own name, to the use of himself and of the said city, town or village, against any person not a commoner of such city, town or village, for trespassing on said commons; and one half of the amount which shall be recovered in any such action, shall be for the use of the person suing for the same, and the other half for the use of the city, town or village where the trespass was committed.

Actions for waste on commons.

SEC. 2. *Be it further enacted*, That if any person, whether a commoner or not, shall wantonly and unnecessarily cut, waste or destroy any timber growing on the common lands of any such city, town or village, or shall wantonly and unnecessarily commit any other waste upon the said commons, and the trustees or body corporate of such city, town or village shall fail to prosecute for the same for one week after being notified thereof, or if there are no trustees or body corporate to such city, town or village, then it shall be lawful for any person, being a lotholder of such city, town or village, to bring an action of trespass on the case against such person for such waste, in his own name, to the use of himself and of the said city, town or village; and the amount which he shall be entitled to recover shall be double the value of the timber or other thing which he shall prove the defendant to have thus wasted, unless the trustees or body corporate shall have imposed a fine by their by-laws for such waste, then and in that case the amount of the recovery shall be the amount of such fine; the one half of the amount recovered shall go to the person suing for the same, and the other half to the use of the said city, town or village.

Jurisdiction of justices of the peace.

SEC. 3. *Be it further enacted*, That justices of the peace, in their respective counties, shall have jurisdiction in all cases under this act, where the sum in dispute shall not exceed ninety dollars, and costs shall be recovered as in other cases.

[*Approved*, *December* 22, 1824.]

CONSTABLES.

AN ACT to provide for the appointment of Constables.

8th Feb. 1825.

Constable to be appointed in each township—by what authority.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That it shall be the duty of the tribunal transacting county business,* in each county in this state, at their first term in every year, to appoint a suitable person as constable for each township in their respective counties: *Provided,* That if the said tribunal, or any of them, shall neglect to make said appointments at their first term as aforesaid, they may make said appointments, or any of them, at any succeeding term, and fill all vacancies, from time to time that may occur: *Provided,* That nothing in this act contained shall be so construed as to affect the appointment of any constable now in office, until the term for which he has been elected or appointed shall have expired, or he be removed for misdemeanor in office.

Proviso.

Term of service one year.

SEC. 2. *Be it further enacted,* That the constable shall hold his office for one year, and until his successor shall be appointed and qualified; he shall, within ten days after his appointment, enter into bond, with security, to be approved of by the tribunal for the transaction of county business in term time, or if in vacation, by the clerk thereof, to the state, in a sum not exceeding one thousand dollars nor less than two hundred dollars, at the discretion of the said tribunal or clerk, conditioned that such constable shall execute all process to him directed and delivered, and to pay the moneys received by him upon the same, and in every respect to discharge the duties of constable according to law; and [he shall] also take an oath, before such tribunal or clerk, faithfully to execute the duties of his office: *Provided, however,* That if the said bond shall be taken in vacation, it shall be approved or disapproved by the said tribunal at the next session; but the obligation of such bond shall in no wise be impaired by the disapproval of the said tribunal.

Shall give bond.

Condition.

Bond to be approved.

Bond, how sued on, and copy, evidence.

SEC. 3. *Be it further enacted,* That the constable's bond, required by this act, shall be filed with the clerk of the said county tribunal of the proper county, and may be sued upon at the instance of any person injured by the breach of such bond; and a certified copy of such bond shall be admitted as evidence in any suit, motion or proceeding founded thereon: *Provided,* That if a verdict is given for the defendant, or the suit discontinued, the person at whose instance the suit is brought shall be liable, at the discretion of the court, to double or single costs, and judgment may be entered against him accordingly; no suit, however, shall be instituted on such bond after one year from the

Limitation.

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*County courts.

expiration of the time for which such constable was appointed.

Constable may appoint deputies.

SEC. 4. *Be it further enacted*, That every constable may appoint one or more deputies, for whose conduct he shall be answerable; which appointment shall be filed of record in the office of the clerk of the said county tribunal.

Appointments pro tempore, by justice.

SEC. 5. *Be it further enacted*, That the justices of the peace in every township, or a majority of them, shall have power to fill any vacancy that may happen in the office of constable, until the sitting of the next county tribunal, and until an appointment shall be made to supply such vacancy.

Constable withholding money collected, may be removed from office.

SEC. 6. *Be it further enacted*, That if any constable shall withhold or detain from any person entitled thereto, any money by him collected in virtue of his office, after being required to pay over the same, such constable, on conviction thereof before the county court, shall be removed from office, on motion founded on charges exhibited for that purpose, notice of the intended motion, with a copy of the charges, being first served on such constable ten days at least before the day on which the motion is intended to be made.

[*Approved*, *February* 8, 1825.]

CONTRACTS AND PROMISES.

12 Feb. 1825.

AN ACT defining the effect of Contracts and Promises.

What agreements must be in writing

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That no action shall be brought, whereby to charge any executor or administrator, upon any special promise, to answer for any debt or damages out of his own estate; or whereby to charge the defendant, upon any special promise, to answer for the debt, fault or miscarriage of another [person;] or to charge any person, upon any agreement made in consideration of marriage, or upon any contract for the sale of lands, tenements, hereditaments, or any interest in or concerning them, or any lease thereof for a longer term than one year, or upon any agreement that is not to be performed within the space of one year from the making thereof,—unless the agreement upon which the action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized.*

Contracts, sales, &c. without writing, not valid,

SEC. 2. *Be it further enacted*, That no contract for the sale of goods, wares and merchandize, for the price of thirty dollars or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold and actually received the same, or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.*

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*29 Car. 2, ch 3, sec. 4.

unless earnest be given, part delivered.

*29 Car. 2, c 3, sec. 17.

Scroll equivalent to seal.

SEC. 3. *Be it further enacted*, That any instrument in writing, to which the person executing the same shall affix a scrawl by way of seal, shall be adjudged and holden to be of the same force and obligation as if it were actually sealed.

Joint contracts, declared joint and several.

SEC. 4. *Be it further enacted*, That from and after the passage of this act, all contracts which by the common law are deemed joint only shall be construed and adjudged to be joint and several to all intents and purposes; and in case of the death of one or more joint obligor or obligors, promisor or promisors, the joint debt or contract shall and may survive against the heirs, executors and administrators of the deceased obligor or obligors, promisor or promisors, as well as against the survivor or survivors; and when all the obligors or promisors shall die, the debt or contract shall survive against the heirs, executors and administators of all deceased joint obligors or promisors; and in all cases of joint obligations and joint assumptions of co-partners or others hereafter to be entered into, suits may be brought and prosecuted on the same against any one or more of those who are so liable.

Repeal.

SEC. 5. *Be it further enacted*, That "an act placing unsealed writings on the same footing as sealed writings," approved the twenty-seventh day of November, in the year eighteen hundred and twenty-two, be and the same is hereby repealed.

[*Approved, February* 12, 1825.]

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CONVEYANCES.

AN ACT regulating conveyances.

4 July, 1825.

Operation of conveyances to use, &c.

SEC. 1. *Be it enacted by the general assembly of the state of Missouri*, That where any person or persons stand or be seized, or at any time hereafter shall stand or be seized, of and in any manors, messuages, lands, tenements, rents, services, reversions, remainders, or other hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will, or otherwise, by any manner of means whatsoever; in every such case, all and every such person or persons, and bodies politic, that have or hereafter shall have any such use, confidence or trust, in fee simple, for term of life or of years, or otherwise, or any use, confidence, or trust, in remainder or reversion, shall from thenceforth stand and be seized, deemed and adjudged, in lawful seizin, estate, and possession, of and in the same manors, messuages, lands, tenements, rents, services, reversions, remainders, and hereditaments, with their appurtenances, to all intents, constructions and purposes in law, of and in such like estates, as they had or shall have in use, confidence or trust of or in the same; and that the estate, right, title, and possession, that was or shall be in such person or persons, that were or hereafter shall be seized of any lands, tenements, or hereditaments, to the use, confidence, or trust, of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him, her or them, that have or hereafter shall have such use, confidence, or trust, after such quality, manner, form and condition, as they had before, in or to the use, confidence or trust, that was or shall be in them.

Deeds valid, notwithstanding adverse possession.

Sec. 2. *Be it further enacted*, That any person claiming right or title to lands, tenements, or hereditaments, although he, she or they may be out of possession, and notwithstanding there may be an adverse possession thereof, may sell, convey, and transfer, his or her interest in and to the same, in as full and ample a manner as if he or she was in the actual possession of the lands or premises intended to be conveyed; and the grantee or grantees shall have the same right of action for the recovery thereof, and shall in all respects, derive the same benefit and advantages therefrom as if the grantor or grantors had been in actual possession at the time of executing the conveyance; any law, usage, or custom to the contrary notwithstanding.

Joint tenancy can only exist in certain cases.

Sec. 3. *Be it further enacted*, That no estate in joint tenancy, in any lands, tenements, or hereditaments, shall be held or claimed under any grant, devise, or conveyance whatsoever, heretofore or hereafter made, other than to executors or trustees, unless the premises therein mentioned shall expressly be thereby declared to pass, not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees, (unless otherwise expressly declared as aforesaid) shall be deemed to be in tenancy in common.

Entails, not allowed.

Sec. 4. *Be it further enacted*, That in cases where by the common law any person or persons would now be, or might hereafter become seized in feetail, of any lands, tenements, or hereditaments, by virtue of any devise, gift, grant, or other conveyance, heretofore made or hereafter to be made, or by any other means whatsoever, such person or persons, instead of being or becoming seized thereof in feetail, shall be deemed and adjudged to be and become seized thereof for his or her natural life only; and the remainder shall pass in fee simple absolute, to the person or persons to whom the estate tail would, on the death of the first grantee, devisee, or donee, in tail, first pass, according to the course of the common law, by virtue of such devise, gift, grant, or conveyance.

The words, "grant, bargain & sell," to operate as covenants.

Of seizen.

Against incumbrances.

For further assurance.

SEC. 5. *Be it further enacted*, That all deeds whereby any estate of inheritance in fee simple, is or shall be limited to the bargainee or grantee, and his heirs, the words "grant, bargain, and sell," shall amount to, and be construed and adjudged to be, express covenants to the bargainee or grantee, his heirs and assigns, for the bargainor or grantor for himself, his heirs, executors, and administrators, that the bargainor or grantor was, at the time of execution of such deed, seized of and indefeasible estate in fee simple, in and to the lands, tenements and hereditaments, thereby granted, bargained and sold; and that the same was then free from incumbrances, done or suffered from the bargainor or grantor, his heirs and assigns, and all claiming under him; and also for further assurance thereof to be made by the bargainor, his heirs and assigns; unless the same shall be restrained and limited by express and particular words, contained in such deed, and the bargainee or grantee, his heirs, executors, administrators, and assigns, respectively, shall and may, in any action to be brought, assign a breach or breaches thereupon, as they might do in case such covenants were expressly inserted in such deed.

Title acquired by grantee after conveyance by him, enures to grantee.

SEC. 6. *Be it further enacted*, That if any person shall sell and convey to another, by deed or conveyance, purporting to convey an estate in fee simple absolute, in any tract of land, or real estate, lying and being in this state, not then being possessed of the legal estate or interest therein, at the time of the sale and conveyance, but after such sale and conveyance, the vendor shall become possessed of and confirmed in the legal estate to the land or real estate, so sold and conveyed, it shall be taken and held to be in trust and for the use of the grantee or vendee, and the conveyance aforesaid shall be held and taken, and shall be as valid as if the vendor or grantor had the legal estate or interest at the time of said sale or conveyance.

Deeds absolute, which by other writing appears intended as a security, deemed a mortgage.

SEC. 7. *Be it further enacted*, That every deed conveying real estate, which by any other instrument or writing shall appear to have been intended only as a security, in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; but the person or persons for whose benefit any such defeas-

Defeasance to be recorded.

ance, or other writing intended to operate as a defeasance, is made, shall not have the benefit thereof, unless the defeasance, or other writing intended to operate as such, shall be recorded in the office in which the absolute deed is required to be recorded, within thirty days after such absolute deed is recorded.

All deeds & conveyances, &c to be acknowledged or proved.

Sec. 8. *Be it further enacted*, That all deeds, grants, bargains, conveyances, mortgages, defeasances, bonds, covenants, or other writings, of and concerning any lands, tenements, or hereditaments, whereby the same may be affected in law or equity, shall be acknowledged by the grantors, bargainors, covenantors, or persons executing such writing, in proper person, or by his or their lawful attorney, authorised by power in writing for that purpose, specially, or proved by one or more subscribing witnesses thereto, before some court of record, or before any judge, justice, or clerk thereof, within this state, or before some justice of the peace within the county in which the land intended to be conveyed or affected lies; and where the party executing any deed or writing is not a resident of this state, such proof and acknowledgment may be taken before any court of record in the state in which such deed or writing shall be executed.

Non resident grantors, may acknowledge deeds out of the State.

Sec. 9. *Be it further enacted*; That all acknowledgments and proofs of any deeds, conveyances, or writings, made as aforesaid, by persons being or residing out of the United States, at the time of the execution thereof, to any citizen of the United States, for the conveyance of lands in this state, taken or made before the mayor of any principal city in the kingdom or government where the grantor may reside, and duly certified under the seal of office of the mayor of the said city, shall be of like force and validity, and entitle the same to be recorded, as if the same was taken in the manner prescribed in the seventh section of this act.

Acknowledgment, not to be taken, unless grantor be personally known or identified.

Certificate of acknowledgment.

Sec. 10. *Be it further enacted*, That no court or officer shall take the acknowledgment of any person to any deed or instrument of writing, as aforesaid, unless the person offering to make such acknowledgment shall be personally known to him, or them, to be the real person who, and in whose name such acknowledgment is proposed to be made, or shall be proved to be such by two credible witnesses; and the court or officer taking such acknowledgment shall, in his or their certificate thereof, state, that such person was personally known to him, or them, to be the person whose name is subscribed to such deed, or writing, as having executed the same, or that he was proved to be such by two credible witnesses (naming them); and

Proof of deeds how taken.

on taking proof of any deed, or instrument of writing, by the testimony of any subscribing witnesses, the court or officer shall ascertain that the person who offers to prove the same is a subscribing witness, either from his own knowledge, or from the testimony of two credible witnesses; and if it shall appear from the testimony of such subscribing witness, that the person whose name appears subscribed to such deed or writing, is the real person who executed the same, and that the witness subscribed his name as such, in his presence and at his request, the court or officer shall grant a certificate, stating that the person testifying as subscribing witness was personally known to him, or them, to be the person whose name appears subscribed to such deed as witness of the execution thereof, or that he was proved to be such by two credible witnesses (naming them), and stating the proof made by him:

Certificate.

Proof, where grantor and witnesses are dead.

and where any grantor or person executing such deed or writing, and the subscribing witnesses, are deceased, or cannot be had, the court or officer, as aforesaid, may take proof of the hand writing of such deceased party, and subscribing witness or witnesses (if any,) and the examination of competent and credible witnesses, who shall state, on oath or affirmation, that they personally knew the person whose hand-writing they are called to prove, and well know his signature, (stating their means of knowledge,) and that they believe the name of such person subscribed to such deed or writing, as party or witness, (as the case may be,) was thereto subscribed by such person; and when the hand-writing of the grantor or person executing such deed or writing, and of one subscribing witness, (if any there be,) shall have been proved as aforesaid, by at least two witnesses to each, the court or officer shall grant a certificate thereof, stating the proof aforesaid.

Relinquishment of dower, how taken

SEC. 11. *Be it further enacted*, That it shall and may be lawful for any married woman to release her right of dower, of, in and to any lands and tenements whereof her husband may be possessed or seized by any legal or equitable title, during coverture, by joining such husband in the deed or conveyance for the conveying such lands and tenements, and appearing and acknowledging the same before any court of record in this state, or any judge, justice or clerk thereof, or before any justice of the peace within the county in which the lands lie, or (if she be not a resident of the state) before any court of record of the state in which she resides; and it shall be the duty of such court or officer, if such woman be not personally known to him or them to be the person who subscribed such deed or conveyance, to ascertain the same by the testimony of at least

Identity to be ascertained.

Examination

Certificate.

two competent and credible witnesses, and upon being satisfied of that fact, shall acquaint such woman with the contents of the deed or conveyance, and shall examine her separate and apart from her husband, whether she executed the same and relinquishes her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion or undue influence of her said husband; and if she acknowledges that she executed the same and relinquishes her dower in the lands and tenements therein mentioned voluntarily and freely, without compulsion or undue influence of her husband, such court, judge, clerk or justice shall grant a certificate, to be endorsed and annexed to such deed, stating that such woman is personally known to him or them, or was proved by two witnesses (naming them) to be the person who subscribed such deed or writing, and that she was made acquainted with the contents thereof, and was examined, and acknowledged such deed as aforesaid,—which being recorded, together with the deed duly executed and acknowledged by the husband according to law, shall be sufficient to discharge and bar the claim of such woman to dower in the lands and tenements conveyed by such deed or conveyance.

Husband and wife may convey real estate of the wife.

Acknowledgment.

SEC. 12. *Be it further enacted*, That when any husband and wife shall wish to dispose of or convey the real estate of the wife, it shall and may be lawful for the said husband and wife to execute any grant, bargain, sale, lease, release, feoffment, deed, conveyance, or assurance in the law whatsoever, for the conveying of such lands, tenements and hereditaments; and if after the executing thereof such wife shall appear before some court of record in this state, to the judges of which, or either of them, she is known or proved by two witnesses to be the person who executes such deed or conveyance, such court, or one of the judges thereof, shall make her acquainted with and explain to her the contents of such deed or conveyance, and examine her separately and apart from her husband, whether she executed the same voluntarily, freely, and without compulsion or undue influence of her husband; and if such woman shall upon such examination acknowledge such deed or conveyance to be her act and deed, that she executed the same voluntarily, freely, and without compulsion or undue influence of her husband, and does not wish to retract, the court shall cause their clerk to make a certificate, endorsed or annexed to such deed, stating that such woman was personally known to the judges, or one of them, or proved by two witnesses (naming them) to be the person who subscribed such deed or conveyance, and setting forth that the contents were made known and explained to her, and the examination and acknowledgment aforesaid,—and such deed (being acknowledged or proved according to law as to the husband) shall be as effectual in law as if executed by such woman while sole and unmarried: *Provided*, That no covenant or warranty, contained in any such deed or conveyance, shall in any manner bind or affect such married woman, or her heirs, further than to convey from her and her heirs effectually her right and interest expressed to be granted or conveyed in such deed or conveyance; nor shall any thing therein contained be construed to authorize any husband and wife to convey any estate granted to the wife and her heirs during coverture.

Proviso.

Proof and acknowledgment. how certified.

Sec. 13. *Be it further enacted*, That when the proof or acknowledgment of any deed, conveyance, or other writing as aforesaid shall be taken or made before any court or clerk, the certificate of such acknowledgment or proof shall be signed by the clerk, and attested by the seal of the court, and when taken or made before any other officer, such certificate shall be signed by such officer.

Deeds, &c. to be recorded,

Sec. 14. *Be it further enacted*, That all grants, bargains, sales, leases, releases, mortgages, defeasances, covenants, conveyances, bonds, contracts, and agreements, of or concerning any lands, tenements or hereditaments, or whereby the same may be affected in law or equity, shall be recorded, together with the certificate of proof or acknowledgment, in the office of the recorder of the county in which the lands, tenements or hereditaments thereby conveyed or to be conveyed or affected lie,—and from the time of filing the same with the recorder for record, shall impart full and perfect notice to all persons of the contents thereof, and all subsequent purchasers and mortgagees shall be deemed and held in law and equity to purchase with notice; but no such deed, or other instrument of writing as aforesaid, shall be valid or binding, except between the parties thereto and such as have actual notice thereof, until the same shall be deposited with the recorder as aforesaid.

Take effect, impart notice from time of delivery for record.

Powers of attorney.

Sec. [illegible] *Be it further enacted*, That all powers or letters of attorney or agency authorizing the granting, selling, conveying, assuring, releasing or transferring, or for the executing or acknowledging any grants, sales, leases, assurances, or other conveyances or writings whatsoever, concerning any lands and tenements, or whereby the same may be affected in law or equity, shall be acknowledged or proved and recorded as herein before required in case of deeds and other assurances; after which, all grants, conveyances and assurances, made and acknowledged pur-

To be acknowledged or proved & recorded.

Revocation.

suant to the powers granted, unless the same be revoked, by a deed duly acknowledged and proven and recorded as aforesaid, shall be as valid and effectual as if executed and acknowledged by the constituent or constituents.

Recorded deeds, evidence.

SEC. 16. *Be it further enacted*, That every deed, conveyance, or other writing of or concerning any lands, tenements, or hereditaments, which by virtue of this act shall be required or entitled to be recorded as aforesaid, being acknowledged or proved according to the provisions of this act, whether the same be recorded or not, may be read in evidence without any further proof of the execution thereof; and if it shall appear to the satisfaction of the court, that the original deed so acknowledged or proved and recorded is lost, or not in the power of the party wishing to use it, a transcript of the record thereof, certified by the recorder in whose office the same may be recorded, under the seal of his office, may be read in evidence in any court of this state without proof thereof.

On proof of loss.

Copy of record may be read.

This act shall take effect and be in force from and after the fourth day of July next.

[*Approved*, *February* 14, 1825.]

CORONERS.

18 Dec, 1824.

AN ACT concerning Coroners.*

Duties of coroner.

Be it enacted by the General Assembly of the state of Missouri, That it shall be the duty of the coroner to serve all writs and process when the office of sheriff of the county shall be vacant, or when the sheriff shall be a party to a suit, or when it shall be proven to the satisfaction of the court who grant such writs or process, or to the clerk thereof in vacation, that the sheriff is interested in the suit, related to either party, or prejudiced against any party to such suit; and shall return jurors for the trial of such cases. It shall be his duty to take inquest of violent deaths, and casual deaths, happening in his county, or where the body of any person coming to such death shall be discovered in his county; and shall make returns of such inquests to the circuit court. He shall be a conservator of the peace within his county; and shall, before he enters upon the duties of his office, take the oaths required by the constitution and give bond in a sum of at least one

To take oath and give bond.

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*The manner of appointing Coroners, their term of service, &c. are regulated by the constitution of the state, (*Art. 4, sec. 23, 24, and 25;*) and by the act regulating elections, (*Sec. 1—24, 25; see title "Elections."*)

thousand dollars, with sufficient security,—which bond shall be taken and approved, and recorded, in the same manner as the bonds required by law in the case of sheriffs, and with like effect.

[*Approved, December* 18, 1824.]

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CORPORATIONS.

AN ACT to regulate proceedings against Corporations.

30 Dec. 1824.

Process against corporation to be a summons.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That in all actions which may be instituted in law or equity against any private corporation or incorporated company, it shall be sufficient to issue a summons, commanding the corporation, by their corporate name, to appear and answer the action or bill; which summons shall be returnable in like manner, and subject to the same rules and regulations, as the like process in case of individuals.

How process shall be served.

SEC. 2. *Be it further enacted,* That if a summons be issued as aforesaid, against any banking, turnpike or other incorporated company, service on the president or other head, or, in his absence, on the cashier, chief clerk, treasurer or secretary, or, in the absence of these officers, then on any director or manager of such company, such president or other officer being at the time of service within the county in which he usually resides or the banking house or office of such corporation is situate, shall be deemed sufficient service of such summons; and in like manner, such service on the chief officer, or, in his absence, on any other officer of any private corporation other than those enumerated, such persons then being within the limits of such corporation or in the county in which their office or place of doing business is situate, shall be sufficient. And on the return of such summons, served as aforesaid, the officer serving the same shall express in his return distinctly on whom and where the same hath been executed; and if on any other than the chief officer, he shall express the absence of such officer, or that he could not be found, whereupon the same proceedings to final judgment or decree shall be had against such corporation, as in other cases. And all notices, orders, and rules, required to be served in the progress of any cause, shall be served in like manner.

Process not served, publication to be made.

SEC. 3. *Be it further enacted,* That in case the sheriff or other officer shall return any summons as aforesaid not served, and it shall be made appear to the court that process cannot be served as aforesaid, then the court shall make an order, directing the defendants to cause their appearance to be entered to said action on or before the first day of the next term of the said court;—a copy of which order shall be inserted in some newspaper printed in this state, for at least six weeks; and the publication of such order in manner aforesaid, being duly proved, shall have the like effect, and the cause be proceeded in, as in case of summons duly served.

Execution or judgment, to be *fi fa.*

SEC. 4. *Be it further enacted*, That the first process upon a judgment against any private corporation shall be a *fieri facias*, which the sheriff or other officer shall levy on the moneys, goods and chattels, lands and tenements, of such corporation, and proceed thereon as in other cases.

In default of goods and chattels, attachment to be issued.

SEC. 5. *Be it further enacted*, That in case the sheriff or other officer shall return upon any writ of *fieri facias* as aforesaid, that no goods and chattels, lands and tenements, can be found whereon to levy, or if the property taken shall not be sufficient to satisfy the judgment, interest and costs, it shall be the duty of the clerk of any circuit court, on the application of the plaintiff or his attorney, to issue a writ of attachment against the rights and credits of such corporation, reciting the judgment, execution and return, and directed to the sheriff of the county, who shall execute the same by summoning as garnishee any person having any moneys or effects belonging to such corporation, and any debtor to such corporation who may be found within his county, to appear before the circuit court at the return of the writ, and then and there answer touching any moneys or effects of such corporation in his hands, or any debt he may owe to the same; and from the time of making such service, all moneys and effects due and owing, payable or belonging to such corporation, shall be bound until the judgment is satisfied; and no payment made thereafter to such corporation, or other disposition of any debts, moneys or effects so attached, shall be credited to the garnishee making the same,—nor shall the stock owned by such person in such corporation be allowed as a set off.

Proceedings against garnishee.

SEC. 6. *Be it further enacted*, That proceedings against garnishees, under the provisions of this act, shall be the same as against the garnishee summoned in the case of an absent or absconding debtor; but no judgment shall be rendered against him for any debt to become due at a future day, until after the same shall become due.

Credit to garnishee for payments.

Surplus how disposed of.

SEC. 7. *Be it further enacted*, That for all moneys paid by any garnishee under this act, he shall have credit against the corporation to whom it was due; and if any moneys remain in the hands of the sheriff or other officer after satisfying the judgment, he shall pay the same to the corporation or their orders; and if a sufficient sum be not made to satisfy such judgment and costs, other writs of attachment may be issued as aforesaid, from time to time, until the whole is satisfied.

SEC. 8. *Be it further enacted*, That upon the dissolution of any corporation already created, or which may hereafter be created by the laws of this state, the president and directors or managers of the affairs of said corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such moneys and property will enable them; and shall have authority to sue for and recover such debts and property, by the name of the trustees of such corporation, describing it by its corporate name, and may be sued by the same name.

Upon dissolution of corporation, affairs to be settled by trustees.

SEC. 9. *Be it further enacted*, That nothing herein contained shall be construed to extend to any corporation of any county or township, city, borough, town or village, or other public or municipal corporation, or to any public university, academy, seminary or school incorporated by the laws of this state.

This act not to extend to public corporations.

SEC. 10. *Be it further enacted*, That all laws and parts of laws coming within the purview of this act, be and the same are hereby repealed.

Repeal.

This act shall [take] effect and be in force from and after the passage thereof.

[*Approved, December* 30, 1824.]

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COSTS.

AN ACT concerning Costs.

26 Jan. 1825.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That in all actions on office bonds for the use of any person, actions on the bonds of executors, administrators or guardians, *qui tam* actions, actions on any penal statute, and in all cases in law or equity, where the plaintiff or person for whose use the action is to be commenced, shall not be a resident of this state, the plaintiff or person for whose use the action is to be commenced, shall, before he institutes such suit, file, or cause to be filed, with the clerk of the circuit court in which the action is to be commenced, the bond or obligation of some person, being a resident of this state, whereby he shall acknowledge him-

Security for costs, in what cases required before action commenced.

In what cases after suit commenced.

self bound to pay, or cause to be paid, all costs which may accrue in such action; and if any such action shall be commenced without filing such bond or obligation, the court, on motion, shall dismiss the same, and the attorney of the plaintiff shall pay all costs accruing thereon: and if at any time after the commencement of any suit by a resident of this state, he shall become non-resident, or in any case the court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, it shall be the duty of the court, on motion of the defendant or any officer of the court, to rule the plaintiff, on or before a day in such rule named, to give security for the payment of costs in such suit; and if such plaintiff shall neglect, or refuse on or before the day in such rule named, to file the bond or obligation of some responsible person, being a resident of this state, whereby he shall bind himself to pay all costs which have accrued, or may accrue in such action, the court shall, on motion, dismiss the suit.

Who may sue in *forma pauperis.*

SEC. 2. *Be it further enacted*, That if any court shall before or after the commencement of any suit pending before them, be satified that the plaintiff is a poor person, and unable to prosecute his or her suit, and pay the costs and expenses thereof, they may in their discretion, permit him or her to commence and prosecute his or her action as a poor person, and thereupon such person shall have all the necessary writs, process, proceedings as in other cases, without fees, tax or charge; and the court may assign to such person counsel, who [as well] as all other officers of the court, shall perform their duties in such suit without any fees, charge or reward: *Provided*, That if judgment be entered for the plaintiff, there shall be judgment for his costs, which costs shall be collected for the use of the said officers.

When plaintiff shall recover costs.

SEC. 3. *Be it further enacted*, That if any person shall sue in any court in this state, any action, real, personal or mixed, or upon any statute for any offence or wrong immediately personal to the plaintiff, and shall recover any debt or damage in such action, then the plaintiff or demandant shall have judgment to recover costs against the defendant, to be taxed,—and the same shall be recovered, together with the debt or damages, by execution against the body or estate of the defendant.

When defendant shall recover costs.

SEC. 4. *Be it further enacted*, That if any person shall sue, in any court in this state, in any action wherein the plaintiff or defendant might have costs in case judgment be given for him, and he be *non-prossed* or suffer a discontinuance, or be non-suited after appearance of the defendant, or a verdict pass against him, then the defendant shall have judgment against the plaintiff or demandant, to recover his costs to be taxed, and the same shall be recovered by execution.

In actions of replevin.

Sec. 5. *Be it further enacted*, That any person making avowry, justification or cognizance in replevin, if the same be found for him, or the plaintiff be non-suited, *non-prossed*, suffer a discontinuance, or otherwise barred, then such person shall recover his damages and costs against the plaintiff, in like manner as the plaintiff would have done if the same had been found against the defendant.

Judgment on demurrer.

Sec. 6. *Be it further enacted*, That if, in any action as aforesaid, judgment upon any demurrer by either party to the action shall be given against the plaintiff or demandant, the defendant shall recover costs against the plaintiff or demandant; and if such judgment be given for the plaintiff or demandant, he shall recover costs against the defendant; and the person so recovering costs shall have execution for the same as aforesaid.

Several pleas, some adjudged bad, &c.

Sec. 7. *Be it further enacted*, That where any defendant in any action, or plaintiff in replevin, shall plead several matters, and any such matters upon demurrer joined shall be adjudged insufficient, or if a verdict shall be found in any issue in the cause for the plaintiff or demandant, costs shall be given at the discretion of the court.

Several counts, some insufficient or found for defendants.

Sec. 8. *Be it further enacted*, That where there are several counts in any declaration, and any one of them be adjudged insufficient, or a verdict on any issue joined thereon shall be found for the defendant, costs shall be awarded at the discretion of the court.

Several defendants in tort, some acquitted.

Sec. 9. *Be it further enacted*, That where several persons are made defendants to any action of trespass, assault, false imprisonment, detinue, replevin, trover or ejectment, and any one or more of them shall upon the trial be acquitted by verdict, every person so acquitted shall recover his costs of suit, in like manner as if such verdict of acquittal had been given in favor of all the defendants, unless it shall appear to the court that there was reasonable cause for making such person defendant to such action.

On scire facias and prohibition.

Sec. 10. *Be it further enacted*, That in all suits upon any writ of *scire facias*, or upon prohibition, the plaintiff obtaining judgment, or an award of execution after plea pleaded or demurrer joined therein, shall recover his costs of suit; and if the plaintiff shall be non-suited, *non-prossed*, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs.

Sec. 11. *Be it further enacted*, That where any action

Amount of recovery below the jurisdiction.

shall be prosecuted in any court, the subject matter of which is cognizable before such court, but the amount of debt or damages recovered shall be below the jurisdiction of the court, the plaintiff shall recover no costs, but may have costs adjudged against him, in the discretion of the court.

Actions of slander, trespass, &c.

SEC. 12. *Be it further enacted*, That in all actions upon the case for slanderous words, trespass, assault and battery, if upon the trial of the issue or inquiry of damages, any damages be found for the plaintiff, the plaintiff shall recover his costs.

On appeal and certiorari prosecuted by defendant.

SEC. 13. *Be it further enacted*, That when any defendant shall prosecute an appeal or *certiorari* upon the judgment of any justice of the peace, and the judgment of the justice shall be affirmed, or the plaintiff upon a trial *de novo* shall recover as much or more than the amount of the judgment of the probate court or justice, the plaintiff below shall recover his costs in both courts; but if the plaintiff shall recover less than the judgment appealed from or removed, he shall recover only his costs in the probate court or before the justice, and the defendant shall recover his costs in the appellate court; and if such judgment be reversed entirely, the plaintiff below be non-suited, or upon a trial *de novo* recover nothing, the defendant shall recover his costs in both courts.

On appeal or certiorari prosecuted by plaintiff, on judgment against him.

SEC. 14. *Be it further enacted*, That when any appeal or *certiorari* shall be prosecuted by the plaintiff from any judgment given against him by the probate court or justice of the peace, and such judgment shall be reversed, and upon a trial *de novo* he shall recover against the defendant any debt or damages, he shall recover his costs in both courts; but if the judgment be affirmed, or upon a trial *de novo* he shall recover nothing or be non-suited, the defendant shall recover his costs in both courts.

On appeal or certiorari prosecuted by plaintiff, on a judgment in his favor.

SEC. 15. *Be it further enacted*, That when any plaintiff shall prosecute an appeal or *certiorari* from the judgment of any probate court or justice of the peace in his favor, and such judgment shall be reversed, and upon a trial *de novo* he shall recover more than the original judgment, he shall recover his costs in both courts; but if the judgment be affirmed, or upon a trial *de novo* he shall not recover more than the original, he shall recover his costs only before the probate court or justice, and the defendant shall recover his costs in the appellate court; and if upon a trial *de novo* he recover nothing, or be non-suited, the defendant shall recover his costs in both courts.

On writs of error and ap-

SEC. 16. *Be it further enacted*, That if any person shall sue out a writ of error, or take an appeal to review the peals from circuit court.

judgment of any circuit court, and the same judgment be affirmed, or the writ of error or appeal be discontinued or quashed, or the plaintiff in error appellant be non-suited, the defendant in error or appellee shall recover his costs and have execution therefor; and if the judgment be reversed, the appellant or plaintiff in error shall recover his costs, and shall have execution therefor as in other cases.

In chancery causes.

Sec. 17. *Be it further enacted*, That upon the complainant dismissing his bill in equity, or the defendant dismissing the same for want of prosecution, the defendant shall recover against the complainant full costs; and in all other cases in chancery (not otherwise directed by law) it shall be in the discretion of the court to award costs or not, and the payment of costs when awarded may be compelled by execution.

Actions on bonds &c. to the state.

Sec. 18. *Be it further enacted*, That in all suits commenced or to be commenced upon any obligation, bond or other specialty, or any contract express or implied made to or with the state, or the governor thereof, or any other person to the use of the state or any county, then and in every such case, if the plaintiff shall recover any debt or damages in such action, he shall recover costs as any other person in like cases; but if such plaintiff suffer a discontinuance, or be non-suited or *non-prossed*, or verdict pass against him, the defendant shall not recover any costs against the plaintiff.

Actions brought by one person to the use of another, who liable for costs.

Sec. 19. *Be it further enacted*, That when any suit shall be commenced in the name of one person to the use of another, the person to whose use the action is brought shall be held liable and bound for the payment of all costs which the plaintiff may be adjudged or bound to pay.

Clerks to tax and subscribe bills of costs.

Sec. 20. *Be it further enacted*, That the clerk of any court in this state, is hereby authorized and required to tax and subscribe all bills of costs arising in any cause or proceeding instituted in the court of which he is clerk, agreeable to the fees which shall for the time being be allowed or specified by law; and shall in no case allow any item or charge, unless he shall be satisfied that the service for which it was made was actually performed in the cause.

Bills of costs may be re-taxed, how.

Sec. 21. *Be it further enacted*, That if any person shall feel himself aggrieved by the taxation of any bill of costs by the clerk, he may apply to the court in which the action or proceeding was had, to re-tax the same according to law; and if the said court shall find any charge allowed for services not performed, or for which the person charged is not liable, or any item charged higher than by law is allowed, then the court shall correct such taxation; and if the party aggrieved shall have paid such unlawful charge, the clerk shall forfeit all fees allowed to him for taxation, and shall pay to the party aggrieved the whole amount which he may have paid by reason of the allowing such unlawful charge.

How collected before judgment, or from security and others liable.

SEC. 22. *Be it further enacted*, That in all cases where either party shall be adjudged to pay costs, before final judgment, by reason of setting aside, a non suit, default, or *non pross*, or the granting a continuance, or new trial, or otherwise, and in all cases where there is security for costs, or attorney liable for costs, or on action brought to the use of another, and the plaintiff shall be adjudged to pay the costs, either before or upon final judgment, it shall be lawful for the clerk of the court to make out and tax a bill of costs so adjudged to be paid, against the party adjudged to pay the same, and against his security for costs, or other person liable for the payment thereof, or either of them, and certify the same, under the seal of the court; which being delivered to the sheriff of the proper county, he shall demand payment from the person therein charged; and if payment shall not be made accordingly, within thirty days after such demand, the sheriff shall levy the same on the goods and chattels, lands and tenements, of the persons so chargeable, and proceed therein in all things as on a writ of *fieri facias*.

Attornies liable in case of neglect of duty.

SEC. 23. *Be it further enacted*, That if any attorney or counsellor at law, shall commence any action, and fail to prosecute the same, or if any suit so commenced, shall be dismissed for the want of his attention to the same, or if he shall bring the action wrong, and it be necessary to enter a non suit, or if it shall be made to appear to the satisfaction of the court, that the action, plaint, or suit was wrongly brought, dismissed, or a non suit entered, in consequence of the neglect of any attorney or counsellor at law, it shall be the duty of the court to render up judgment against any such attorney or counsellor at law for the full amount of the costs thereby incurred, and all damages in consequence thereof. [*Approved, January* 26, 1825.]

COUNTIES.

CHAP. I.

BOUNDARIES.

AN ACT defining the limits of the several Counties in this State. 16 Feb. 1825.

St. Louis.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri,* That all that portion of territory bounded as follows, to wit: beginning in the middle of the main channel of the river Mississippi, due east of the mouth of the river Merrimack; thence due west to the middle of the main channel of the river Merrimack, at its mouth; thence up said river, in the middle of the main channel thereof, to a point where the township line between the townships forty three and forty four, north, crosses the same; thence west with said line to a point in the middle of the main channel of the Merrimack, where said township line again crosses the same; thence up said river, in the middle of the main channel thereof, to a point where the range line between ranges two and three, east, crosses the same; thence north with said line to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to its mouth; thence due east to the middle of the main channel of the river Mississippi; thence down said river, in the middle of the main channel thereof, to the beginning, shall compose one county, and be called and known by the name of Saint Louis.

St. Charles.

Sec. 2. *Be it further enacted,* That all that portion of territory included within the following boundaries, to wit: commencing at a point in the middle of the main channel of the river Mississippi, opposite the mouth of the river Cuivre, and running up said river Cuivre, in the middle of the main channel thereof, to a point opposite the mouth of the Eagle fork; thence up the said fork, in the middle of the main channel thereof, to a point opposite where the fifth principal meridian crosses the same; thence due south with said meridian, to a point in the middle of the main channel of the river Missouri; thence down said river, in the middle of the main channel thereof, to its mouth; thence due east to the middle of the main channel of the river Mississippi; thence up said river, in the middle of the main channel thereof, to the beginning, shall form a county, to be called and known by the name of Saint Charles.

Ste. Genevieve.

Sec. 3. *Be it further enacted,* That all that portion of territory bounded as follows, to wit: beginning in the middle of the main channel of the river Mississippi, due east of the mouth of a creek which puts into said river at the head of Boisbrule Bottom, called St. Laurent; thence in a direct line to the mouth of said creek; thence in a direct line to the point of intersection of the principal forks of Saline creek; thence in a direct line to the south west corner of section one, in township thirty four, north, range eight, east; thence in a direct line to the north west corner of section thirty six, in range five, east, township thirty seven, north; thence on a direct line, to the south east corner of section twenty three, township thirty eight, north, range six, east; thence on a direct line toward the south east corner of township thirty nine, north, range five, east, so far as to intersect the northern or principal fork of Isle au Bois creek; thence down said creek to its mouth; thence due east to the middle of the main channel of the river Mississippi; thence down said river, in the middle of the main channel thereof, to the beginning, shall compose a county, to be called and known by the name of Saint Genevieve.

Cape Girardeau.

SEC. 4. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning at a point in the middle of the main channel of the Mississippi river, due east of the mouth of Apple creek; thence to the mouth of said creek, and up the middle of the main channel thereof, to a point where the township line between townships thirty three and thirty four, north, crosses the west or principal fork; thence due west with said line to the dividing ridge between the rivers Castor and White Water; thence in a direct line to the dividing ridge between Castor and Crooked creek; thence southwardly with said dividing ridge, until in strikes the edge of the big swamp, between Jenkins' creek and Castor; thence west to the middle of the main channel of the river Castor; thence down the middle of the main channel of the said river, to the Shawnee village, situate on the west side of the said last mentioned river; thence on a direct line to a point in the middle of the main channel of Cape La Cruse creek, which shall be opposite the centre of the big swamp; thence down the middle of said creek to the mouth thereof; thence due east to the middle of the main channel of the Mississippi river; thence up said river, in the middle of the main channel thereof, to the beginning, shall compose the county of Cape Girardeau, any law to the contrary notwithstanding.

New Madrid

SEC. 5. *Be it further enacted*, That all that portion of territory, included in the following boundaries, to wit: beginning in the middle of the main channel of the river Mississippi, opposite the mouth of James's creek or bayou; thence in a direct line to the mouth of said creek; thence in a north westwardly course to a point in the swamp two miles due east of the northern boundary line of a tract of land situated in the upper end of the big prairie originally granted and confirmed to Moses Hurley, and whereon Elizabeth Philips now lives; thence west to a point in the middle of the main channel of the river St. François; thence down said river, in the middle of the main channel thereof, to the parallel of thirty-six degrees north latitude, and with said parallel of latitude east to the middle of the main channel of the river Mississippi; thence up the said river, in the middle of the main channel thereof, to the beginning,—shall compose the county of New-Madrid.

Washington.

Sec. 6. *Be it further enacted*, That all that portion of country bounded as follows, to wit: beginning in the middle of Grand river, opposite the mouth of the Mineral fork; thence in a northwestwardly direction to the northeast corner of Washington county, as established by the surveyors of the counties of Washington and Franklin; thence due west to the middle of the main channel of the river Merrimack; thence south to a point where the township line between townships thirty-three and thirty four north extended would intersect the same; thence due east to the northwest corner of township thirty-three north, range four east; thence with the range line between ranges three and four east, to the southwest corner of township thirty-six, in range four east; thence with the township line between townships thirty-five and thirty-six, to the southwest corner of section thirty-four, township thirty-six, range four east; thence north through the middle of range four east to the southwest corner of section fifteen, in township thirty-eight, range four; thence to the middle of the main channel of Grand river at its nearest point; thence down said river, in the middle of the main channel thereof to the beginning,—shall compose the county of Washington: *Provided*, That all that portion of country lying west and south of the aforesaid lines of Washington county, and not lying within any other county, shall be attached to and form part of the county of Washington, until otherwise provided by law.

Howard.

Sec. 7. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning in the middle of the main channel of the Missouri river, at a point opposite the mouth of Moniteau creek; thence to the mouth of said creek, and up the middle of the main channel thereof, to a point where the township line between townships forty-eight and forty-nine crosses the same; thence in a direct line to the north east corner of township fifty one, range fourteen, west of the fifth principal meridian; thence in a direct line to a point one and a half miles due west of the northeast corner of township fifty-two, range seventeen, west of the fifth principal meridian; thence in a direct line to a point in the middle of the main channel of the Missouri river, where the sectional line between sections seventeen and twenty, township fifty-one, range seventeen west of the fifth principal meridian intersects the same; thence down said river, in the middle of the main channel thereof, to the beginning,—shall compose the county of Howard.

Jefferson.

SEC. 8. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning in the middle of the main channel of the river Mississippi at the southeast corner of St. Louis county; thence with the southern boundary of St. Louis county, to a point where the range line between ranges two and three east crosses the river Merrimack; thence south to the northwest corner of township forty-two north, range three east; thence in a direct [line] to the northeast corner of Washington county; thence with the Washington county line to the southwest corner of section fifteen, township thirty-eight north, range four east; thence on a direct line to the southeast corner of township thirty-nine north, range five east; thence in a direct line toward the southeast corner of section twenty-three, township thirty-eight, range six, so far as to intersect the northern or principal fork of Isle au Bois creek; thence down said creek with the Ste. Genevieve county line to the middle of the main channel of the Mississippi river; thence up said [river] in the middle of the main channel thereof, to the beginning,—shall compose the county of Jefferson.

Franklin.

SEC. 9. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning in the main channel of the Missouri river, at the northwest corner of St. Louis county; thence south with the range line between ranges two and three east of the northwest corner of township forty-two, range three east; thence on a direct line to the northeast corner of Washington county; thence due west to the middle of range four west; thence due north through the middle of range four west to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the beginning,—shall compose the county of Franklin: *Provided*, That all that portion of country lying west of the county of Washington and south of the county of Franklin, shall be attached to and form part of the county of Franklin, until otherwise provided by law.

Wayne.

SEC. 10. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning at a point on the western boundary of Cape Girardeau county due east of a place called Cedar cabin, and running thence with the western boundary of Cape Girardeau county, to a point where the same intersects the middle of the main channel of the river Castor; thence down said river, in the middle of the main channel thereof, to its mouth; thence down the river St. François, in the middle of the main channel thereof, to the parallel of latitude thirty-six degrees thirty minutes north;] thence west along the same to the southwest corner of the state; thence north with the western boundary of the state, to a point due west of the southwest corner of Washington county; thence east to the southwest corner of said county; thence with the southern boundary of said county, to Black river; thence with said river, in the middle of the main channel thereof, to a point due west of said Cedar cabin; thence east to the beginning,—shall compose the county of Wayne.

Madison. SEC. 11. *Be it further enacted*, That all that portion [of] country bounded as follows, to wit: beginning on the eastern boundary line of Washington county, three miles north of the point where the line dividing townships thirty-three and thirty-four crosses said Washington county line; thence east to the dividing ridge between the rivers Castor and Whitewater; thence [in] a direct line to the dividing ridge between Castor and Crooked creek; thence southwardly with said dividing ridge, to a point where a west line will strike a place known and called the Cedar cabin on the west side of the river St. François; thence west to Black river; thence up Black river to a place where the old Washington county line strikes the same; thence northwardly with the said old Washington line to the beginning,—shall compose the county of Madison.

Lincoln. SEC. 12. *Be it further enacted*, That all that portion of country bounded as follows, to wit: beginning at a point in the middle of the main channel of the river Mississippi, opposite the mouth of the river Cuivre; thence with the northern boundary of St. Charles county to the fifth principal meridian; thence due south to the township line between townships forty-seven and forty-eight north; thence west with the said line to the range line dividing ranges two and three west; thence due north with said line to the township line dividing townships fifty-one and fifty-two north; thence due east to the middle of the main channel of the Mississippi river; thence down said river, in the middle of the main channel thereof, to the beginning,—shall compose the county of Lincoln.

Montgomery. SEC. 13. *Be it further enacted*, That all that portion of territory included in the following boundaries, to wit: beginning in the middle of the main channel of the Missouri river, at a point where the fifth principal meridian crosses the same, and running thence north, with said meridian, to the township line between townships forty-seven and forty-eight north; thence due west to the range line between ranges two and three west; thence north, with said line, to the township line between fifty and fifty-one north; thence west, with said line, to the range line between ranges six and seven west; thence, with said line south to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the beginning,—shall compose the county of Montgomery.

Pike.

Sec. 14. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning at the north east corner of Lincoln county, and running thence west with the northern boundary of said county to the range line between ranges two and three, west; thence south with said line to the township line between townships fifty and fifty one, north; thence west to the range line between ranges four and five, west; thence in a direct line to the south east corner of section sixteen, in township fifty four, range five, west, of the fifth principal meridian; thence in a direct [line] to the north east corner of township fifty five, north, range four, west; thence due east to the middle of the main channel of the river Mississippi; thence down said river, in the middle of the main channel thereof, to the beginning, shall compose the county of Pike.

Cooper.

Sec. 15. *Be it further enacted*, That all that portion of country bounded as follows, to wit: beginning in the middle of the main channel of the Missouri river, at a point where the range line between ranges fourteen and fifteen, west, would intersect the same; thence in a direct line to the corner of townships forty five and forty six, north, in ranges fifteen ~~and sixteen~~, west; thence south with the said range line to the middle of the main channel of the Osage river; thence up said river, in the middle of the main channel thereof, to a point where the range line between ranges twenty and twenty one, west, crosses the same; thence with said range line, north, to the north west corner of township forty-four, north, range twenty, west; thence on a direct line to the north west corner of township forty eight, north, range nineteen, west; thence on a direct line to a point on the southern bank of the Missouri river, where the range line between ranges eighteen and nineteen, west, terminates; thence north to the middle of the main channel of said river; thence down said river, in the middle of the main channel thereof, to the beginning, shall compose the county of Cooper.

Lafayette.

SEC. [illegible]. *Be it further enacted*, That all that portion of country bounded as follows, to wit: beginning at a point in the middle of the main channel of the Missouri river due north of the termination of the range line between ranges twenty three and twenty four, west; thence due south with said line to the middle of the main channel of the Osage river; thence up said river, in the middle of the main channel thereof, to the middle of range twenty nine, west; thence, north, through the middle of range twenty nine, west, to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the beginning, shall compose the county of Lafayette. And all laws in force relating to the county of Lillard, shall be construed to apply, in all respects, to the county of Lafayette; and all acts and things done and performed, and contracts made, or which may be done or made, before the first day of July next, in the name of the county of Lillard, shall be as valid and binding in the said county, and all others, as if made or done in the name of the county of Lafayette; and all matters and business which is commenced, or which shall, before the said day, be commenced in the name of the county of Lillard, shall be continued in the name of the county of Lafayette; and all officers appointed, or to be appointed, for the county of Lillard, shall be deemed and taken to be appointed for the county of Lafayette, and are hereby authorized to act as such.

Laws &c. relating Lillard, to be applied to Lafayette.

Ralls.

SEC. [illegible]7. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning in the middle of the main channel of the Mississippi river, at a point directly east of the line running west between sections twelve and thirteen, in township number fifty six, north, and running, thence, west to the range line between ranges thirteen and fourteen, west; thence with said line, south, to the north east corner of township fifty one, range fourteen, west; thence, east, to the range line between ranges six and seven; thence, south, to the township line between townships fifty and fifty one; thence, east, to the range line between ranges four and five, west; thence on a direct line to the south east corner of section sixteen, township fifty four, range five, west; thence in a direct line to the north east corner of township fifty-five, north, range four, west; thence due east to the middle of the main channel of the Mississippi river; thence up said river, in the middle of the main channel thereof, to the beginning, shall compose the county of Ralls.

Boone.

SEC. [illegible]8. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning in the middle of the main channel of the Missouri river, at the south east corner of Howard county, and running thence with the eastern boundary of said county to the north east corner of township fifty one, range fourteen, west; thence due east with the township line between townships fifty one and fifty two, to the main dividing ridge between the waters of the rivers Mississippi and Missouri; thence along said dividing ridge to the sectional line one mile west of the east boundary line of range eleven, west, in township fifty one, north; thence, south, with said sectional line to the south boundary line of township fifty; thence, west, with said township line one and a half miles, to the middle of the main fork of Cedar creek; thence down Cedar creek, in the middle of the main channel thereof, to where the range line between eleven and twelve crosses said creek the second time; thence with said line, to the middle of the main channel of the Missouri river; thence up said river, in the middle of main channel thereof, to the beginning, shall compose the county of Boone.

Chariton

Sec. 19. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning in the middle of the main channel of the Missouri river, opposite the western line of Howard county; thence with said line to the north west corner of said county of Howard; thence east with the line of Howard county, to the range line between ranges sixteen and seventeen; thence north with the range line dividing ranges sixteen and seventeen, west of the fifth principal meridian line, to township fifty six inclusive; thence west with the township line dividing townships fifty six and fifty seven, to the middle of the main channel of Grand river; thence down said river, in the middle of the main channel thereof, to the middle of the Missouri river; thence down the Missouri river, in the middle of the main channel thereof, to the beginning, shall compose the county of Chariton: *Provided*, That all that portion of territory heretofore included within the county of Chariton, and not included within the limits aforesaid, shall be attached to, and form part of the county of Chariton, for all purposes, civil and military, until otherwise provided by law.

Ray.

Sec. 20. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning at a point in the middle of the main channel of the Missouri river, due south of the termination of range line between ranges twenty five and twenty six, north of said river, and running thence, north, with range line to the township line dividing townships fifty three and fifty four; thence with said line, west, to the range line between ranges twenty nine and thirty; thence south with said range line, to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the beginning, shall compose the county of Ray: *Provided*, That all the territory not included in said boundaries, lying east of the ranges twenty nine and thirty, south of the northern boundary of the state, west of Chariton county, and north of the Missouri river; and all that part of the county of Ray which is stricken off by the before mentioned boundary line, lying north of the before mentioned boundary of said county, be attached to, and form part of the said county of Ray, for all purposes, civil and military, until otherwise provided by law.

Perry.

SEC. [illegible]. *Be it further enacted*, That all that district of country bounded as follows to wit: beginning at a point in the middle of the main channel of the Mississippi river due east of the mouth of Apple creek, thence to the mouth of said creek, and up the middle of the main channel thereof to the mouth of the west or principal fork; thence up said fork to a point where the township line between townships thirty-three and thirty-four north, crosses the same; thence due west to the eastern boundary of Madison county; thence north with said boundary line, to the north east corner of Madison county; thence eastwardly to the south west corner of section one, in township thirty-four north, range eight east; thence in a direct line to a point at the intersection of the principal forks of Saline creek; thence in a direct line to the mouth of St. Laurent creek; thence due east to the middle of the main channel of the Mississippi river; thence down said river, in the middle of the main channel thereof, to the beginning; shall compose the county of Perry.

Cole.

SEC. [illegible]. *Be it further enacted*, That all that portion of territory bounded as follows, to wit: beginning at a point where the range line between ranges fourteen and fifteen west, extended north, will intersect the middle of the main channel of the Missouri river; thence in a direct line to the corner of townships number forty-five and forty-six, of ranges number fifteen and sixteen west of the principal meridian; thence due south with the range line between ranges fifteen and sixteen west, to the middle of the main channel of Osage river; thence down said river, in the middle of the main channel thereof, to the middle of the main channel of the Missouri river; thence up said river, in the middle of the main channel thereof, to the beginning; shall compose the county of Cole.

Saline.

SEC. [illegible]3. *Be it further enacted*, That all that portion of territory included within the following boundaries, to wit: beginning at a point where an extension of the range line between ranges eighteen and nineteen, west of the fifth principal meridian, due north, will intersect the middle of the main channel of Missouri river; thence running due south to the bank of the said river, where the said range line terminates; thence with the western boundary line of Cooper county, to the middle of the main channel of the Osage river; thence up said river in the middle of the main channel thereof, to a point at which an extension of the range line between ranges twenty three and twenty four will intersect the same; thence due north to the middle of the main channel of the river Missouri; thence down said river, in the middle of the main channel thereof, to the beginning, shall compose the county of Saline.

Gasconade.

SEC. 24. *Be it further enacted*, That all that district [of] country included within the following boundaries, to wit: beginning in the middle of the main channel of the Missouri river, south of the termination of the sectional line which forms the middle of range four west of the fifth principal meridian; thence south, through the middle of said range, to the township line between townships thirty-nine and forty; thence west to the range line between ranges eleven and twelve; thence, with said range line, north to the middle of the main channel of Osage river; thence down said river, in the middle of the main channel thereof, to its mouth; thence north to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the beginning,—shall compose the county of Gasconade: *Provided*, That all the territory lying west of the line drawn from the southeast corner of said county, due south to the northern boundary of Wayne county, and not included in or attached to any other county, shall be and is hereby attached to the said county of Gasconade, for all purposes civil and military, until otherwise provided by law.

Callaway.

SEC. 25. *Be it further enacted*, That all the territory included within the limits following, to wit: beginning at a point in the middle of the main channel of the Missouri river, at the southwest corner of Montgomery county, and running thence north with the western boundary of said county to the northwest corner of township forty-nine north, range six west; thence west, with the line between townships forty-nine and fifty, to the eastern boundary line of Boone county; thence, with said boundary line, to the middle of the main channel of Missouri river; thence down said river, int he middle of the main channel thereof, to the beginning,—shall compose the county of Callaway: *Provided*, That all that portion of country lying north and northwest of said county, and south of Ralls county, shall be and is hereby attached to said county of Callaway as part thereof, for all purposes civil and military, until otherwise provided by law.

St. François.

SEC. [illegible]. *Be it further enacted*, That all that part of this state bounded as follows, to wit: beginning at the southwest corner of section one, range eight, township thirty-four; thence northwestwardly to the northwest corner of section thirty-six, in range five, township thirty-seven; thence on a direct line to the southeast corner of section twenty-three, in range six, township thirty-eight; thence on a direct line to the southeast corner of township thirty-nine, range five; thence on a direct line to the southwest corner of section fifteen, in range four, township thirty-eight; thence in a direct line to the southwest corner of section thirty-four, in range four, and township thirty-six; thence with the township line between townships thirty-five and thirty-six, to the southwest corner of township thirty-six, range four; thence due south nine miles; thence due east with the Madison line to the southwest corner of section [illegible]teen, in range eight, township thirty-four; thence on a direct line to the beginning,—shall compose the county of St. François.

Scott.

SEC. [illegible]. *Be it further enacted*, That all that district of country bounded as follows, to wit: beginning at a point in the middle of the main channel of the river Mississippi, opposite a small creek or bayou called James's creek or bayou; and running thence with the northern boundary of New Madrid county to the eastern boundary of Wayne county; thence with the eastern boundary of Wayne county to the southwest corner of Cape Girardeau county; thence with the southern boundary of said county to the middle of the main channel of the river Mississippi; thence down said river, in the middle of the main channel thereof, to the beginning,—shall compose the county of Scott.

Clay.

SEC. [illegible]. *Be it further enacted*, That all that portion of territory included within the following boundaries, to wit: beginning at a point where the range line between ranges twenty-nine and thirty west of the fifth principal meridian extended south would intersect the middle of the main channel of Missouri river; thence north with said range line, pursuing the course thereof to the northeast corner of section thirty-six of range thirty west of township fifty-four north; thence west with said sectional line, pursuing the course thereof to the western boundary line of the state; thence south with the western boundary line of the state to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the beginning,—shall compose the county of

Clay: *Provided*, That the territory included in the former limits of said county of Clay shall be attached to and form a party of said county, for civil and military purposes, until otherwise provided by law.

Marion. Sec. 29. *Be it further enacted*, That a new county hereafter to be establised north of Ralls county, shall be bounded as follows: beginning at a point in the middle of the main channel of the Mississippi river, where the township line between townships fifty-nine and sixty extended east will intersect the same; thence west with said township line, to the range line between ranges eight and nine west of the fifth principal meridian; thence south with said range line to the southern boundary of Ralls county; thence east with said boundary line to the middle of the main channel of the river Mississippi; thence up said river, in the middle of the main channel, to the beginning,—which county, when established, shall be called and known by the name of Marion; but until the said county is organized and established by law, the territory included within the boundaries aforesaid, and all other territory lying north of the northern boundary of the county of Ralls and east of the county of Chariton, shall be attached to and form part of the county of Ralls, for all purposes, civil and military.

Jackson. Sec. 30. *Be it further enacted*, That all that portion of country bounded as follows, to wit: beginning at a point in the middle of the main channel of Missouri river, due north of the termination of the line running through the middle of range twenty-nine west; thence due south with said line to the middle of the main channel of the Osage river; thence due west to the western boundary line of this state; thence north, with the said western boundary line, to the middle of the main channel of the Missouri river; thence down said river, in the middle of the main channel thereof, to the beginning,—shall compose the county of Jackson: *Provided*, That the territory included within the bounds above named shall continue to be attached to and form part of the county of Lafayette, for all civil and military purposes, until the same be established and organized as a separate county by law.

[*Approved, February* 16, 1825.]

CHAP. II.

CONVEYANCES—CONTRACTS—ACTIONS.

AN ACT to enable counties to make contracts, and hold and convey real estate.

Jan. 4, 1825.

Conveyances, to counties or their use, effect.

Be it enacted by the General Assembly of the state of Missouri, That all deeds, grants, and conveyances heretofore made, or which shall hereafter be made, and duly acknowledged and recorded as other deeds, conveying such lands, tenements or hereditaments, to any county, or the inhabitants of any county, and their successors, or to the governor, or any other person or persons, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to all intents and purposes, to vest in such county, in fee simple, all the right, title, interest and estate whatever, which the grantor or grantors, in such deed or deeds, had at the time of the execution thereof in the lands thereby conveyed.

In what manner counties may convey real estate.

Sec. 2. *Be it further enacted,* That the court or tribunal which is, or may be established by law, for the transaction of county business, may, by their order, appoint a commissioner to sell and dispose of any real estate of their county; and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient, to all intents and purposes, to convey to the purchaser or purchasers, all the right, title, interest, and estate, whatever, which the county may then have in or to the premises so conveyed.

Contracts with counties, binding, and how sued on.

Sec. 3. *Be it further enacted,* That all notes, bonds, bills, contracts, covenants, agreements, or writings made, whereby any person or persons is, or shall be bound to any county, or the inhabitants thereof, or to the governor, or any other person or persons, in whatever form, for the payment of any money, or any debt or duty, or the performance of any matter or thing to the use of any county, shall be as valid and effectual, to all intents and purposes, to vest in such county all the rights, interest, and actions, which would be vested in any individual, on any such contract made directly to him; and suits may be commenced, sued, and prosecuted thereon, in the name of such county, or in the name of the persons to whom they are made, to the use of the county, as fully and effectually, to all intents and purposes, as any person may or can, upon like notes, bills, bonds, contracts, agreements, or writings, made to him.

Counties may make contracts.

Sec. 4. *Be it further enacted,* That the tribunal which is, or shall by law be established, for the transaction of county business, may appoint an agent to make any contract on behalf of such county, for erecting any county building, or for any other purpose authorized by law; and the contracts of such agent, duly executed for and on behalf of such county, shall be valid and effectual to bind such county, to all intents and purposes.

Actions, by and against counties, where to be brought.

Process how served.

Inhabitants, may be juror or witnesses

Sec. 5. *Be it further enacted*, That all actions, local or transitory, against any county, may be commenced and prosecuted to final judgment and execution in the circuit court of the county against which the action is brought; and any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant in such action resides; and when any action shall be commenced against any county, a copy of the original summons shall be left with the clerk of the tribunal established for the transaction of county business, fifteen days at least before the return day thereof; and in all actions brought by or against any county, the inhabitants of the county, so suing or being sued, may be jurors or witnesses, if otherwise competent or qualified according to law.

[*Approved*, *January* 4, 1824.]

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CHAP. III.

SEATS OF JUSTICE—NEW COUNTIES.

Jan. 14,1825. AN ACT to provide for organizing Counties hereafter established.

Com'rs for locating seat of justice, how appointed.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That when any new county shall be erected or established, there shall be appointed by the concurrent resolution of the senate and house of representatives, three competent and respectable persons, to be commissioners for selecting a seat of justice for such county, each of whom shall be at least twenty one years of age, and have resided in this state one year previous to his appointment, and shall not be residing within the county so erected or established, nor own or claim any real estate therein.

Secretary of state to notify com'rs of appointment

Meeting of com'rs.

Notice of meeting.

Sec. 2. *Be it further enacted*, That it shall be the duty of the secretary of state immediately to make out and transmit to each of the said commissioners a certificate of his appointment, under the seal of his office; and it shall be the duty of the said commissioners, or a majority of them, immediately after receiving a certificate of their appointment, as aforesaid, to appoint a time and place when and where they will assemble to discharge the duties enjoined on them by this act, and shall cause a notice to be published in some newspaper printed or circulated in said county, one month before such meeting, and shall cause advertisements to be put up in ten of the most public places in the county for the like period, notifying the inhabitants of such county of the time, place, and purport of their intended meeting; and if a majority of such commissioners shall not assemble according to such notice, those appearing shall publicly adjourn the meeting to some other day, and so on as often as may be necessary, until a majority shall assemble, but no such adjournment shall be for a longer period than ten days at one time.

Majority not appearing, adjournment

Com'rs to take oath.

Sec. 3. *Be it further enacted*, That it shall be the duty of each of the said commissioners, before or at the time of assembling as aforesaid, and before entering upon the duties herein after assigned them, to take an oath before some judge or justice of the peace, that he will faithfully discharge the duties of commissioner for said county, without favor, partiality or prejudice; a certificate of which oath, shall be endorsed on the certificate of his appointment;—and when the said commissioners, or a majority of them, shall be so assembled and duly qualified, they shall examine and select the most suitable place in said county, whereon to erect the public buildings and establish the seat of justice of said county, having regard to the situation, extent of population, the quality of land, and the convenience and interest of the inhabitants.

Duty to select a scite.

May purchase or receive by donation, not less than 50, nor more than 160 acres of land.

Sec. 4. *Be it further enacted*, That the said commisioners, or a majority of them, are hereby authorized to purchase or receive as a donation, such parcels of land, and town lots, including the place selected as a seat of justice for said county, as they or a majority of them shall judge most convenient, not exceeding one hundred and sixty acres, (if purchased) and not less than fifty acres in any case; and the donors or venders, shall execute and deliver to such commissioners, a good and sufficient deed or deeds, conveying to such county, the lands so sold or given, in fee simple, without any reservation or condition whatever; and the said donor or donors, vender or venders, shall also deliver to the said commissioners, an abstract of the title, papers, deeds, conveyances, and assurances, by or through which he or they claim to derive title; and the said commissioners shall make report of their proceedings, accompanied by the deed for said land, the abstract and evidences of title aforesaid, to the circuit court of such county at their next session; and if they approve the title, they shall certify their decision thereon, to the tribunal transacting county business; and the place so selected, shall be the permanent seat of justice, for such county, and the title of the land, so conveyed, vested in such county; and if the land, or any

Deed to be executed and delivered with an abstract of the title.

Com'rs to report to the circuit court.

If title approved, location ratified.

If not, deeds, &c. void, and new selection to be made.

part thereof, was purchased, the said tribunal shall make an order that the consideration money be paid out of the first proceeds of the sale of lots, to be laid out on such land; and the clerk shall grant to the vender, a certificate thereof, accordingly; but if the title to such land shall not be approved, the deeds so given by the donor or vender, shall be of no effect, and shall be returned to him, together with other title papers; and the commissioners shall proceed to make some other selection, and make report, and proceed in all things in manner aforesaid, except that no notice shall be required, of their meeting for that purpose.

Vacancies in office of com'r how supplied.

Sec. 5. *Be it further enacted*, That if any vacancy shall happen in the office of any of the said commissioners, by death, resignation, or refusal to act of any of them, the tribunal transacting county business of such new county shall supply such vacancy, by appointing a commissioner or commissioners, duly qualified, as required by the first section of this act; who shall take the same oath, possess the same powers, and perform the like duties, as if originally appointed.

Com'r of seat of justice to be appointed

Who shall take oath & give bond.

Condition of bond.

Sec. 6. *Be it further enacted*, That when the seat of justice of any county shall be established as aforesaid, the tribunal transacting county business of such county, shall immediately appoint some competent and respectable inhabitant of their county to be commissioner of the seat of justice in such county; who, before entering upon the duties of his office, shall take an oath that he will faithfully demean himself in his office of commissioner, and render true and just accounts of his proceedings according to law, which oath may be administered and certified by any justice of the peace. And such commissioner shall, moreover, enter into bond to the governor and his successors in office, for the use of the county, in such sum and with such securities as the said tribunal shall approve, conditioned that he will faithfully demean himself in office, that he will duly account for and pay over and deliver all moneys, bonds, notes, securities or property which may come to his hands, possession or power in virtue of his office, according to law, or the order of any court having competent jurisdiction, and will perform all and singular the duties which are or may be enjoined on him by law, as commissioner as aforesaid; which bond shall be deposited with the clerk of the tribunal transacting county business of such county, and by him recorded,—and such record, or a copy thereof duly certified by such clerk, shall be evidence in any court of this state, with the same effect as the original.

Bond, where deposited—copy, evidence.

Town to be laid off.

Sec. 7. *Be it further enacted*, That if no town has been laid off at the place selected as the permanent seat of justice, or the tribunal transacting county business of such county shall deem it expedient to lay out any part of the land conveyed to such county as aforesaid into additional lots where a town is already laid out, and shall make an order to that effect; and the commissioners of the seat of justice shall proceed to lay off said land into lots, squares, avenues, streets, lanes and alleys, under such regulations as the said tribunal may prescribe; and shall make report thereof to the said tribunal, with a plat of such town or part of a town so laid out,—which, if approved by the said tribunal, shall be deposited in the office of the recorder of the county, and by him carefully preserved.

Plat to be laid before county court

SEC. 8. *Be it further enacted*, That it shall be the duty of the tribunal transacting county business, to designate and reserve from sale such lots and squares of ground as may be necessary for erecting public buildings thereon; and shall from time to time make such orders for the sale of the residue, to be made in such manner and upon such terms as they shall deem expedient, so that at least one fourth of the purchase money be paid in ready money. And the commissioner aforesaid shall make such sales accordingly; and, when the purchase money is paid in full, shall execute a deed to the purchaser, as commissioner as aforesaid, for and on behalf of such county, conveying to the purchaser, his heirs and assigns for ever, the premises sold; and the deed of such commissioner, made under his hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be effectual to all intents and purposes to convey to the purchaser all the right, title, interest, and estate whatsoever, which the county may then have in the premises so conveyed.

Reservations for public use, to be made.

Order of sale to be made.

Deed to be made to purchaser on payment in full.

SEC. 9. *Be it further enacted*, That when any credit shall be given upon the sale of any lot as aforesaid, for any part of the purchase money, the purchaser shall give his note or bond with sufficient security to the commissioner, to secure the payment of each instalment to the said commissioner and his successor in office, for the use of the county, at the time prescribed by the terms of sale. And the said commissioner shall make and deliver to the purchaser a certificate describing the lot to him sold, the price, the amount paid, the balance to be paid, when due, and how secured; which certificate shall be assignable. And when any payment shall be made, the commissioner shall endorse a receipt on such certificate therefor (if required) and also give credit for such amount upon the bond or note (if required) until payment shall be made in full of any such bond or note, when it shall be delivered up to be cancelled; and when full payment shall be made of all the purchase

Sale on credit, purchaser to give note or bond with security.

Com'r. to give certificate.

Payments to be endorsed.

On payment in full.

money, the purchaser, his heirs or assigns, shall deliver up the certificate aforesaid, and the said commissioner shall execute a deed for the lot so paid for, in the same manner and with the like effect as is herein before provided where the whole of the purchase money is paid at the time of sale.

Deed to be made.

On default in payment, lot forfeited and resold.

SEC. 10. *Be it further enacted*, That if default shall be made in the payment of the purchase money of any lot, or any part thereof, according to the terms of sale, or tenor and effect of any note or bond given to secure the same, such lot shall be forfeited to the use of the county, and the commissioner aforesaid, shall sell the same for ready money to the highest bidder, at public auction, at the place of holding courts in such county for the time being, on some day during the sitting of the tribunal transacting county business for such county, giving ten days previous notice of the time and place of sale, and the property to be sold, by advertisements, put up at four of the most public places in the county, and on receiving the purchase money the commissioner shall make a deed to the purchaser, in the same manner and with the like effect as on other sales; and the purchase money shall be accounted for as other moneys received by such commissioners, and the amount thereof (after paying the expenses of sale) shall be credited upon the notes or bonds of such delinquent purchaser, and if there be sufficient to pay the whole, such notes or bonds shall be cancelled, but no part shall be paid to such purchaser, although there may be more than sufficient to pay the debt due by him; and if the proceeds of such sale shall not be sufficient to satisfy the whole of the debt due by such purchaser, the commissioner shall proceed to enforce the payment of the balance by suit, in any court having competent jurisdiction. And it shall be the duty of the attorney general and circuit attorneys, respectively, to commence and prosecute all such actions, which may be required to be commenced and prosecuted, in any circuit court within their respective circuits: *Provided, however*, That the holder of any certificate of sale of any such forfeited lot, may redeem the said lot, at any time before the sale, by paying to the commissioner the whole amount then due, with interest, together with the expenses of advertising, and compensation of the commissioner, as herein after provided; in which case such lot shall not be sold, but proceedings shall be in all things, as if no such delinquency had occurred.

Proceeds of sale how applied.

Deficit, if any, may be recovered.

Lot may be redeemed before sale.

Com'r. to keep account of sales and expenses.

SEC. 11. *Be it further enacted*, That it shall be the duty of every commissioner of any seat of justice as aforesaid, to keep regular and systematic accounts of all sales by him

Settlement to be made.

made shewing the lot sold, the name of the purchaser, the amount paid, the balance to be paid, at what time, and how secured; and an account of the expenses by him incurred; he shall settle with the tribunal transacting county business, of his county, at every term; and shall pay the balance which may be found against him into the county treasury; and when all sales ordered by said tribunal shall be completed and payments made, and deeds therefor made, or in case of resignation, or removal from office, of such commissioner, or if he die his executors or administrators shall, at the first term which shall happen after such death, resignation or removal from office, settle with the said tribunal, and pay or deliver over, according to their order, all moneys, books, papers, notes, bonds, or other securities, belonging to such county.

Money arising from sale of lots, appropriated.

SEC. 12. *Be it further enacted*, That the money arising from the sale of lots, after paying all the expenses accruing in the selecting the seat of justice, in the laying out the town, and selling the lots, shall be applied, first to paying for the land purchased, (if any) and the residue shall be set apart as a specific fund, for the purpose of erecting county buildings, and shall be applied to no other purpose, until all the county buildings, required by law to be erected, shall be fully completed and paid for.

Com'rs under control of the court; for misconduct, may be removed.

Vacancies, how supplied

Settlement and delivery of papers, how enforced.

SEC. 13. *Be it further enacted*, That the tribunal transacting county business, of each county in which a commissioner of the seat of justice shall be appointed, as aforesaid, shall have a superintending control over such commissioner, and may make such orders, from time to time in relation to the duties of his office, as to them shall seem expedient, and may enforce obedience thereto by attachment, and in case of any wilful disobedience of such order, or other wilful neglect or misconduct of such commissioner, may remove him from office; and in case of the death, resignation, or removal from office, of any such commissioner, the said tribunal may supply such vacancy by appointing another, who shall take the like oath, give the like bond, perform the like duties, and be subject to the same proceedings against him, as the original commissioner; and the said tribunal may compel the executors or administrators of any deceased commissioner, or the person so resigning or removed from office, his executors or administrators, to make settlement of his accounts, and pay and deliver over to such successor, or county treasurer, (as the case may require) all moneys, books, papers, notes, bonds, and other securities, received or taken by such commissioner, by virtue of his office.

SEC. 14. *Be it further enacted*, That the commissioners

Compensation of commissioners.

for selecting the seat of justice, appointed under provisions of this act, shall receive from time to time, such reasonable compensation for their services, as shall be allowed by the tribunal transacting county business, of such county, to be paid out of the county treasury; and the commissioner of the seat of justice, shall receive for his services, such compensation for laying out lots, as the said tribunal shall deem just and reasonable, and a commission of two and one half per centum, upon all moneys accruing from the sale of lots, and by him paid into the county treasury, to be paid in manner aforesaid.

Courts to be holden at the seat of justice, as soon as buildings are provided

SEC. 15. *Be it further enacted*, That as soon as convenient buildings for the holding of courts, can be had, or a court house and jail erected, at the established seat of justice of any new county, the courts to be holden in such county, shall be held at such seat of justice; and until such convenient buildings can be had, or a court house and jail be erected, the said courts shall be holden at such place as the tribunal transacting county business shall deem most convenient; and it shall be the duty of the said tribunal, of every new county, as soon as the seat of justice shall be established, according to the provisions of this act, to determine at what place the court shall be held, and cause notice thereof to be given to each of the courts to be holden in their county, at the next term thereof; and such court shall cause the sheriff to make proclamation, at the court house door, that such court will thereafter be held at the place so selected; but when the place so selected shall not be the established seat of justice, the courts to be holden in such county, shall, as soon as a court house and jail are erected, or sooner if the tribunal transacting county business, shall determine it to be expedient, be removed to and held thereafter at such established seat of justice, and it shall be the duty of the tribunal transacting county business, to notify the several courts of the completion of county buildings, or their determination as aforesaid, and such proceedings shall be had thereon for the removal of such courts, as herein before prescribed.

Suits, actions process, &c. to be proceeded on.

SEC. 16. *Be it further enacted*, That when any new county shall be established, or county line altered, all suits, actions, process, prosecutions and proceedings, civil and criminal, commenced before any court or justice of the peace before the time of separation or alteration, shall be proceeded in to final judgment and execution; and all writs and process, before that time issued out of any court or by any justice of the peace, shall be executed and returned in all respects as if such division, separation or alteration had not taken place; and all judgments then ren dered, or which may be rendered upon any proceedings, civil or criminal, then commenced, all fees, fines, penalties and forfeitures which have then accrued or become due, or which accrue in pursuance of any suit, process or proceeding then commenced, all taxes then due or assessed, and all balances or arrearages shall be collected, and the collection thereof enforced in the same manner as if such new county had not been established, or such alteration had not been made; and the sheriffs, coroners, constables and collectors respectively, shall have full power and authority to execute all such writs and process original and judicial, and to collect all moneys, fines, penalties and forfeitures, fees, taxes, balances and arrearages, which may be due or become due as aforesaid, and to enforce the payment thereof from any person within their county, as it stood before such division or alteration, in the same manner as they might have done respectively if such new county had not been established, or such alteration had not been made.

Executors, adm'rs and guardians, where to settle their accounts.

Sec. 17. *Be it further enacted*, That all executors, administrators and guardians, who by the establishment of a new county, or the alteration of county lines, shall cease to be inhabitants of the county in which they were appointed or receive their letters, shall nevertheless continue to render their accounts and make settlement, and in all things proceed in the court by which they were appointed, or their accounts remain to be settled, in all respects, and be subject to the like proceedings therein, as if such new county had not been established or such alteration had not been made: *Provided*, That it shall be lawful for the court in which the accounts of any such executor, administrator or guardian remain to be settled, upon good cause shown, to transfer such accounts to the proper court of the county in which such executor, administrator or guardian resides; in which case, the clerk of such court shall make out a transcript of the record, and copies of all accounts and papers touching such administration or guardianship, and cause the same to be transmitted by some safe conveyance to the clerk of the court to which the accounts are to be transferred, and the clerk receiving such papers shall file the same in his office, and proceedings shall be had thereon in all things in the court to which the accounts are transferred, as if they had originated in such court; and the party applying for such removal shall pay all costs of making out such transcript and copies, and transmitting the same, before the same shall be delivered to be transmitted.

Sec. 18. *Be it further enacted*, That all justices of the

Justices of the peace to continue in the discharge of duties.

peace, whose residence by the establishment of any new county or alteration of county lines shall fall without the county for which he was originally appointed, shall nevertheless have full power and authority to proceed, in all cases commenced or judgments rendered before him, as a justice of the peace of such county, to final judgment and execution; and from the time of such separation or alteration, he shall and may act as a justice of the peace for the county in which he may fall, for the period of six months; and if he be not before the expiration of that time appointed a justice of the peace for such county, he shall deliver to some justice of the peace within the township in which he resides, all dockets, books, documents and papers which may belong or relate to his office of justice of the peace, whole, safe and undefaced,—and the justice to whom they are delivered shall receive the same, and give a receipt therefor, and proceed therein in all unfinished business in the same manner as if the same had been commenced before him.

This act to apply to com'rs appointed before its passage.

SEC. 19. *Be it further enacted*, That the provisions of this act shall apply as well to the duties of commissioners heretofore appointed, and who have not completed the object of their appointment, in the same manner as is provided for commissioners to be appointed by this act, and to all new counties laid off or county lines altered at this session of the general assembly.

[*Approved, January* 14, 1825.

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CHAP. IV.

REMOVAL OF SEATS OF JUSTICE.

Feb. 5, 1825.

AN ACT to provide for the removal of Seats of Justice in certain cases.

On petition of 3-5 of the inhabitants of a county, com'rs. to be appointed.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That whenever three fifths of the taxable inhabitants of any county (to be ascertained by the tax list made and returned last preceding the application) shall petition the tribunal transacting county business in such county, praying a removal of the seat of justice thereof to a place to be designated in said petition, the said tribunal shall appoint five respectable and competent persons to be commissioners for selecting a scite whereon to locate the seat of justice, each of whom shall be at least twenty-one years of age, and have resided within this state one year previous to his appointment, and shall not be a resident of the county, nor own nor claim any real estate therein; and the said tribunal shall grant to each person so appointed a certificate thereof, under the seal of the tribunal. And the said tribunal shall appoint a time and place when and where the commissioners shall assemble to perform their duties, and shall cause a notice thereof to be served on each of the commissioners, and shall cause advertisements to be put up by the sheriff in ten of the most public places of the county, one month before such meeting, notifying the inhabitants of such county of the time, place and purport of the meeting. And it shall be the duty of the said commissioners to assemble accordingly; and if a majority do not appear according to such notice, those appearing shall publicly adjourn to some other day; and so on as often as may be necessary, until a majority shall assemble; but no such adjournment shall be for a longer period than ten days at one time.

Time and place of meeting.

Notice of meeting.

Sec. 2. *Be it further enacted*, That it shall be the duty of each of the said commissioners, before or at the time of assembling as aforesaid, and before entering upon the duties hereinafter assigned them, to take an oath, before some judge or justice of the peace of such county, that he will faithfully discharge the duties of commissioner for said county, without favor, partiality or prejudice,—a certificate of which oath shall be endorsed on the certificate of his appointment; and when the said commissioners or a majority of them shall be so assembled and duly qualified, they shall examine and select the most suitable place in said county, *within one mile of the place so designated*, whereon the public buildings are to be erected, having regard to the situation, the quality of the land, and the convenience and interest of the inhabitants.

Com'rs. to take an oath.

To select a scite.

Sec. 3. *Be it further enacted*, That the said commissioners, or a majority of them, are hereby authorized to purchase, or receive as a donation, such parcels of land and town lots, including the place selected as a seat of justice for said county, as they, or a majority of them, shall judge most convenient, not exceeding one hundred and sixty acres, if purchased, and not less than fifty acres in any case. And the donors or venders shall execute and deliver to such commissioners, a good and sufficient deed or deeds, conveying to such county the lands so sold or given in fee simple, without any reservation or condition whatever, and the said donor or donors, vender or venders, shall also deliver to the said commissioners an abstract of the title papers, deeds, conveyances and assurances, by or through which he or they claim to derive title. And the said commissioners shall make report of their proceedings, accompanied by the deed for said land, the abstract and evidences of title aforesaid, to the circuit court of such

Com'rs may purchase or receive by donation, lands, &c.

Deeds and abstracts of title to be made and delivered.

county at their next session; and if they approve the title, they shall certify their decision thereon to the tribunal transacting county business; and such tribunal shall thereupon order an election to be held to determine such selection, and appoint a day for holding the same, which shall not be less than thirty days from the time of making the order; and the sheriff of the county shall cause notices to be set up in ten of the most public places in the county, twenty days before holding the election, notifying the inhabitants thereof of the time, places and purport of the election, particularly describing the place selected. The said election shall be conducted, in all things, in the same places and in the same manner as general elections for civil officers; but no person shall be permitted to vote, who shall not be a land or house holder, inhabitant of said county, have paid a county tax to such county within two years next preceding the election. The votes shall be taken for and against the selection, and shall be so expressed on the poll book. The polls shall be closed in the same manner and at the same time as at other elections, and the poll books shall be returned to the clerk of the tribunal ordering the election, who shall lay them before said tribunal at the next term thereof; and the said tribunal shall cast up and arrange the votes, and if it shall appear that three fifths of all the taxable land or house holders, inhabitants of said county, have voted for the selection, then the place so selected shall be the permanent seat of justice for such county, and the title so conveyed vested in such county; and if the land or any part thereof was purchased, the said tribunal shall make an order that the consideration money be paid out of the first proceeds of the sale of lots to be laid out on such lands, and the clerk shall grant to the vender a certificate thereof accordingly. But if the title to such lands be not approved, the deed so given by the donor or vender shall be of no effect, and shall be returned to him, together with the other title papers; and the commissioners shall proceed to make some other selection, within the limits so designated, and make report and proceed in all things in manner aforesaid, except that no notice shall be required of their meeting for that purpose. But if at any election as aforesaid, three fifths of the taxable land or householders of said county do not vote for the selection, no further proceedings shall be had: *Provided*, That if the commissioners shall in any case select a place already laid out into town lots, they may accept a donation in money or public buildings, in lieu of lands or town lots.

If titles approved, election to be held.

Three fifths required to approve selection.

If title is not approved, a new selection to be made.

If selection is not approved, no further proceedings had.

SEC. 4. *Be it further enacted*, That if any vacancy shall

Vacancies in the office of com'rs how supplied.

happen in the office of any of the said commissioners, by death, resignation, or refusal to act of any of them, the tribunal transacting county business shall supply such vacancy, by appointing a commissioner or commissioners, duly qualified as required by the first section of this act, who shall take the same oath, possess the same powers, and perform the like duties, as if originally appointed; and every commissioner shall be entitled to receive, for his services, one dollar per day for every day he shall be employed in discharging any of the duties aforesaid.

Com'r. of the seat of justice to be appointed.

Sec. 5. *Be it further enacted*, That whenever any seat of justice shall be removed as aforesaid, the tribunal transacting county business for such county shall appoint a suitable person to be commissioner of such seat of justice, who shall take the like oath, give the like bond, perform the same duties, and be entitled to the like compensation, as a commissioner of a seat of justice of a new county. And the said tribunal shall proceed in all things, and all other proceedings shall be had in like manner, as is provided by an act to provide for organizing counties hereafter established.

Courts to be held at the new seat of justice, when buildings are provided.

Sec. 6. *Be it further enacted*, That as soon as convenient buildings for the holding of courts can be had at such new seat of justice, and also a good and sufficient jail, the courts to be holden in such county shall be there held; and until such convenient buildings are provided, the court shall continue to be held at the old seat of justice. And when suitable buildings are provided at the new seat of justice as aforesaid, the tribunal aforesaid shall notify the judges of the several courts thereof, at the next term of said courts respectively to he holden in their county; and such court shall cause the sheriff to make proclamation at the court house door, that such court will thereafter be held at the place so selected.

Owners of lots at the old seat of justice, how compensated

Sec. 7. *Be it further enacted*, That when any seat of justice shall be removed, after it is established according to the provisions of this act, it shall and may be lawful for the owner or owners of any lot or lots, at the old seat of justice, which may have been purchased from the county, or any commissioners or agents, duly authorized to convey the same, on the behalf of the county, to relinquish such lot or lots to the county, by deed in that behalf, duly executed, acknowledged, and recorded; and the person making such relinquishment, shall be entitled to receive a certificate for the whole amount of money paid to said county, their commissioners or agent, for the lot so relinquished; which certificate shall be assignable and be received in payment of any lot or lots which may be purchased by the

Title to be examined.

lawful holder thereof, at the new seat of justice; but before any such certificate shall be granted, the person making the relinquishment shall present to the attorney general, or circuit attorney prosecuting for the district, the deed of relinquishment, and the evidences of his title to the lot or lots therein proposed to be relinquished; and it shall be the duty of such attorney general or circuit attorney, to examine the records in the recorder's office of the county, and the records of all courts whose judgments or decrees might be a lien on such lot or lots, and if he shall be satisfied that the person so proposing to relinquish any lot, hath all the title in the same originally conveyed by the county or any commissioner or agent thereof, and that there is no existing lien preventing such relinquishment, and that the deed executed by the person offering to make the relinquishment, is sufficient to re-convey to the county, all the title to the lot proposed to be relinquished, to the same extent that the county or any commissioner or agent, to the use of such county, originally held in the same, the attorney general or circuit attorney, shall grant a certificate of his examination, and his opinion as to the title; and such petition being presented to the tribunal transacting county business, the said tribunal, if they are satisfied that the person making the application is the owner of the lot proposed to be relinquished, shall grant a certificate, stating that the person making the relinquishment, is entitled to a credit in the purchase of any lot or lots, purchased by him or his assigns, at the new seat of justice, for the sum paid to the county for the lot relinquished, to be specified in the certificate; which certificate shall be signed by the president of the tribunal, and countersigned by the clerk; and if any owner or owners, or any of them, of any such lot at the old seat of justice, be a minor or minors, it shall be lawful for his, her or their guardian or guardians, on their behalf, to make and execute any deed or deeds, for the relinquishment of such lot, to proceed thereon in like manner as the owners of lots, who are of full age: *Provided*, That no person shall be entitled to the benefit of this section, unless he produce the certificate of the circuit attorney, or attorney general, as herein before required, within six months after the removal of the seat of justice shall be finally determined, as prescribed by this act.

Certificate to be granted.

Limitation.

Improvements may be removed.

SEC. 8. *Be it further enacted*, That every person taking the benefit of the preceding section, and the guardians of such as are minors, shall be and they are hereby authorized, at any time within twelve months after the relinquishing of any lot or lots to the county, as aforesaid, to remove from the lot or lots so relinquished, any buildings or other improvements which may have been erected thereon, at any time after the sale thereof originally made by the county, or by the commissioners or agents, authorized to make such sale.

Relinquished lots to be conveyed to donor in certain cases.

SEC. 9. *Be it further enacted*, That in all cases where the lot or lots relinquished as aforesaid, shall be included in any donation of land, made to the county for the purpose of locating thereon the seat of justice, it shall be the duty of the tribunal transacting county business, to cause the same to be re-conveyed to the person or persons who made such donation, or their heirs, upon demand: *Provided*, That such re-conveyance shall not be construed to prevent the persons relinquishing such lot or lots, from removing buildings or improvements, as aforesaid.

Other relinquished lots to be sold.

SEC. 10. *Be it further enacted*, That if any lot or lots, relinquished to the county under the provisions of this act, shall have been purchased to the use of such county, the lots so relinquished shall be sold in like manner, and by the same persons, as is herein before provided for the sale of lots at the new seat of justice; and the proceeds thereof shall be applied to the erection of county buildings, in the same manner as the proceeds of sales made at the new seat of justice; saving however, to all persons making such relinquishment, the right of removing buildings and other improvements, within the time herein before prescribed for that purpose.

No seat of justice fixed under this act to be removed after two years, unless improvements be paid for by county.

SEC. 11. *Be it further enacted*, That after the seat of justice shall be fixed under the provisions of this act, and the same shall not be removed, or no petition for that purpose be filed within two years from the time it is so first fixed, in that case any such seat of justice shall be considered permanently fixed, and shall not thereafter be removed from the place first fixed on, unless the county tribunal shall cause a sufficient tax to be assessed on all taxable property in any such county, where the said seat of justice shall be thus removed, to satisfy and pay the individual lot holders, for their lots and improvements thereon; and the said county tribunal shall appoint three disinterested persons, who shall live out of such county, to value all lots and improvements in the seat of justice so first fixed, and report the valuation thereof to the county tribunal, who shall thereupon cause the taxes so assessed, to be levied and collected, in the same manner as other taxes are collected, and pay over to each lot holder, the value of his lot and improvements.

Property relinquished to county may be sold.

SEC. 12. *Be it further enacted*, That all lots and the improvements thereon, shall be considered as belonging to any such county, after the purchaser shall have been paid for the same, and may be sold for the use of such county, by order of the county tribunal; and in case of sales made of lots as aforesaid, by the order of the county tribunal, the same shall be conveyed to the purchaser by the person authorized to sell the same; and the said commissioners shall have power to borrow a sufficient sum of money to buy the lands on which any new seat of justice shall be fixed, at a rate of interest not exceeding eight per cent per annum; and all moneys so borrowed, shall be first paid out of the proceeds of the lots sold in the new seat of justice.

[*Approved, February 8th*, 1825.]

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COUNTY BUILDINGS.

17 Jan. 1825.

AN ACT to provide for erecting County Buildings.

Court house and jail to be erected.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That there shall be erected in each county, at the established seat of justice thereof, a good and sufficient court house and jail; and as soon as the court house and jail shall be erected, and the circumstances of the county will permit, there shall also be erected one or more fire-proof buildings, at some convenient place or places near the court house, in which shall be kept the offices of the recorder and of the clerks of the several courts and tribunals of such county.

Fire proof offices.

Buildings to be erected on order of court.

SEC. 2. *Be it further enacted*, That whenever the tribunal transacting county business of any county, shall think it expedient to erect any of the buildings aforesaid (the building of which shall not be otherwise provided for) and there shall be sufficient funds in the county treasury appropriated to the erection of county buildings, or not otherwise appropriated, or the circumstances of the county will otherwise permit, they shall make an order for the building thereof, stating in such order the amount to be appropriated for that purpose; and shall appoint some suitable person to superintend the erection of such building, who shall take an oath or affirmation faithfully and impartially to discharge the duties enjoined on him by this act; and the said tribunal shall, from time to time, fill any vacancy which may happen in the office or appointment of such superintendent.

Superintendent to be appointed.

Place of erecting buildings to be designated.

SEC. 3. *Be it further enacted*, That the tribunal transacting county business shall designate the place whereon to erect any county building, on any land belonging to such county, at the established seat of justice thereof; but if there is no suitable ground for that purpose belonging to the county, the superintendent shall select a proper piece of ground at the seat of justice, and may purchase, or receive by donation, a lot or lots of ground for that purpose, and shall make a good and sufficient deed in fee simple for the same to the county, and shall make report of his proceedings to the circuit court at their next sitting. And such court shall examine the title, and certify their decision thereon to the tribunal transacting county business; and if the title to the land so purchased or secured be approved, the said tribunal transacting county business, if they approve the selection, shall make an order for the payment of the purchase money (if any) out of the county treasury.

Ground may be purchased

SEC. 4. *Be it further enacted*, That when the ground for erecting any public building shall be designated as aforesaid, the superintendent shall prepare and submit to the tribunal transacting county business a plan of the building to be erected, the dimensions thereof, and the materials of which it is to be composed, with an estimate of the probable cost thereof. And when any plan shall be approved by the said tribunal, the superintendent shall immediately advertise for the receiving proposals for erecting such building, stating in his advertisement a description of such building, and shall contract with the person who will agree to do the work on the lowest and best terms, not exceeding the amount appropriated; and the superintendent shall take from the undertaker a bond to the county, with sufficient security, for the performance of the work at such time and in such manner as shall be agreed on, according to the plan (a copy of which shall be annexed) under a penalty of at least double the amount to be given for erecting the building.

Plans to be prepared and submitted to the court, with proper estimates.

Advertisements for receiving proposals.

Undertaker to give bond.

SEC. 5. *Be it further enacted*, That it shall be the duty of [the] superintendent aforesaid to superintend and direct the execution of the work, and to see that the materials employed are good, and the work executed according to contract, and shall make report of the progress and condition thereof, from time to time, to the tribunal transacting county business.

Superintendent to inspect the work and materials.

SEC. 6. *Be it further enacted*, That when any instalment shall become due to the undertaker, according to contract, the tribunal transacting county business shall make an order that the same be paid out of the county treasury: *Provided*, That no such order shall be made, unless the superintendent certify that a due proportion of the work has been completed, and is executed according to contract.

Payments, how to be made.

SEC. 7. *Be it further enacted*, That the superintendent of the county buildings as aforesaid shall receive such compensation for his services as the tribunal transacting county business shall deem reasonable, to be paid out of the county treasury.

Compensation of superintendent.

Alterations, repairs, &c.

SEC. 8. *Be it further enacted*, That the tribunal transacting county business, of each county, shall have power from time to time to alter, repair or re-build any county buildings as aforesaid, which have been or may be erected hereafter in their county, and may cause a pillory and necessary out-houses to be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damages.

Persons committing waste, &c liable to fourfold damages

SEC. 9. *Be it further enacted*, That if any person shall commit any trespass, waste or injury in or upon any county buildings as aforesaid, or other property belonging to any county, he or she shall forfeit and pay to the use of the county fourfold damages, to be recovered in the name of the county, in any court having competent jurisdiction, in such form of action as individuals may maintain for like injuries to their property.

[*Approved, January* 17, 1825.]

COUNTY LINES.

Jan. 1, 1815.

AN ACT supplementary to an act establishing counties and county lines.

Order of court for ascertaining lines.

SEC. 1. *Be it enacted by the general assembly of the territory of Missouri*, That whenever it shall appear to the satisfaction of the *court of common pleas, or of the* county court, of any county now established or hereafter to be established, that the boundary line or lines of their county are not sufficiently special and well ascertained, it is hereby made the duty of the said court *of common pleas, or county court, that may be hereafter established as aforesaid*, to issue an order to any person they shall select as county surveyor, requiring him, on a certain day, by them to be fixed on and mentioned in their said order, to ascertain, survey and mark such line or lines, designating in such order, from what point to what point. And it shall also be the duty of the said court making the order aforesaid, to give notice thereof, at least ten days prior to running and marking said line or lines, to the court of the county adjacent; whereupon the court receiving such notice, shall issue an order to any person they may select as their surveyor, ordering him to proceed with the surveyor of the other county, to survey and mark such line or lines as may be designated in said order.

Notice to be given.

How that order shall be executed.

SEC. 2. *Be it further enacted*, That the persons so as aforesaid selected as surveyor shall, on the reception of such order from their respective courts, proceed, on the day mentioned in said order, to ascertain, mark and survey such line or lines; and if they shall not be able to finish the same in one day, to continue from day to day, (Sundays excepted) until the work shall be finished. They shall each make out a return of such line or lines, so as aforesaid surveyed, to their respective courts, at their next succeeding term; which, if approved by the court, shall be recorded by the clerk, as evidence of said line or lines.

Return.

Settlement of expenses.

Sec. 3. *Be it further enacted*, That the said surveyors shall respectively make out their accounts of expenses for surveying and marking said line or lines; and if allowed by the courts, shall be equally borne by said counties, and paid out of their respective levies or treasuries.

Non-attendance of one of the surveyors.

Sec. 4. *Be it further enacted*, That in case either person shall not attend as surveyor, for the purpose of surveying and marking said line or lines, it shall and may be lawful for the person attending on the part of either county or court, to proceed alone to survey and mark said line or lines, as herein before provided. And the surveyor so making the survey, shall make two copies or plats of the line or lines thus run, and return one copy to each of the courts; which being approved of as aforesaid, shall be recorded, and be the lines of the aforesaid. And the expenses accruing from running such line or lines, shall be borne equally by the two counties, and be paid as is provided in the third section of this act.

This act shall take effect and be in force from and after the passage thereof.

[*Apppoved, January* 1, 1815.]

COUNTY TREASURY.

AN ACT to establish and regulate a county treasury in each county. 11 Feb. 1825.

Court to adjust and settle demands against county.

Sec. 1. *Be it enacted by the general assembly of the state of Missouri*, That the tribunal which is or may be established in each county for the transaction of county business, shall have power to audit, adjust and settle all accounts between their counties and any person, body politic or corporate; and to order to be paid out of the county treasury, any sum or sums of money, found to be due to any person, body politic or corporate, and properly chargeable to their county; and may enforce the collection of all moneys due their county. And the said tribunal, at their first term in each year, or as soon thereafter as may be, shall appoint some fit and proper person, resident of the proper county,

Treasurer to be appointed

who shall do and perform all things which are or may be prescribed by law to be done and performed by the county treasurer; and shall immediately after his appointment, enter into bond with good and sufficient security, to the said county, in such a sum of money as may be required by the said tribunal, conditioned for the true and faithful performance of his duties as county treasurer, and that he will truly account for and pay over all moneys which he may receive, as county treasurer; which bond shall be approved by the said tribunal, and filed in the office of their clerk: *Provided*, That nothing in this act shall be so construed as to authorize the said tribunal to appoint their clerk, or any sheriff, treasurer of their county.

Treasurer's bond.

Proviso.

Duty of treasurer.

SEC. 2. *Be it further enacted*, That it shall be the duty of each county treasurer, to receive all moneys payable into the county treasury, and pay and disburse the same on warrants, drawn by order of the tribunal established for the transaction of county business, according to law; he shall keep a true and just account of all moneys received and disbursed; he shall keep regular abstracts of all warrants drawn on the county treasury and by him paid; he shall keep his books and money at all times ready for the inspection of the tribunal established to transact county business; and shall, at each stated term or session of said tribunal, or oftener if required, furnish the said tribunal with an account of the receipts and expenditures of such county, (not before accounted for) balanced to the day of making out the same; he shall, once in every year, settle his accounts with said tribunal, and produce his vouchers; and if he resign, or be removed from office, he shall (or in case of his death, his executors or administrators shall) immediately make a settlement with the tribunal aforesaid, and deliver to his successor in office, all books, papers, accounts, and other things, belonging or appertaining to his office, and all moneys belonging to the county.

Settlements.

Accounts of the county how kept & by whom.

SEC. 3. *Be it further enacted*, That it shall be the duty of the clerk of the tribunal aforesaid, to keep regular accounts between the treasurer and the county, and therein charge him with all moneys paid into the county treasury; he shall keep just and true accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or who may become entitled to receive moneys from the treasury, by reason of any contract or appropriation made by the tribunal aforesaid; and shall charge such persons, bodies politic and corporate, with all moneys which they may be liable to pay into the county treasury, and all warrants drawn in their favor upon the county treasury; and shall credit them with all moneys by them paid into the treasury, and all allowances made to them by the tribunal aforesaid; he shall keep his books at all times ready for the inspection of the tribunal aforesaid; and he shall keep an abstract of all warrants issued by him, and shall, at every term, present to the tribunal aforesaid, the said abstract, and shall balance the accounts by him kept, and exhibit the same to the said tribunal.

Clerks of courts to keep accounts of moneys accruing to the county.

SEC. 4. *Be it further enacted*, That it shall be the duty of the clerks of the several courts of record, in this state, to keep a just and true account of all taxes, fines, penalties, forfeitures and judgments accruing to any county, which shall be rendered or imposed by their respective courts, or accrue upon any writ, process, certificate or proceeding in their respective courts or offices, and keep the same at all times ready for the inspection of the judges of their respective courts.

Clerks to settle their accounts at each term.

SEC. 5. *Be it further enacted*, That it shall be the duty of the clerks of the several courts of record to render to the judges of their respective courts, at each term thereof, a just and true account, verified by oath or affirmation, of all moneys which he hath or ought to have received to the use of any county, and not before accounted for; and the said judges shall audit and adjust the same, according to the records, dockets and papers of their respective courts, and shall make two separate bills of the several sums with which their clerks shall be chargeable, specifying on what account the same is payable, which shall be certified by the judges or a majority thereof, and one copy thereof, so certified, shall be immediately filed in the office of the clerk of the tribunal for transacting county business, and the said clerk shall immediately charge the same accordingly.

Amount to be certified.

Sheriffs to make settlements at each term.

SEC. 6. *Be it further enacted*, That it shall be the duty of the several courts of record within this state, at each term of their respective courts, to settle with the sheriff of every county within their jurisdiction, for all moneys by him received, or which ought to have been collected by him to the use of any county, for any tax, fine, penalty, forfeiture, judgment or otherwise, and not before accounted for, and shall cause their clerk to make out two separate lists of all sums chargeable to any sheriff, and payable to any county, specifying on what account,—which shall be certified by the clerk, under the seal of the court, and one copy, so certified, shall be immediately transmitted to the clerk of the tribunal established for the transaction of county business, in the county to which such moneys are payable; and such clerk shall immediately charge the same accordingly.

Justices of the peace to report fines imposed by them every three months

SEC. 7. *Be it further enacted*, That it shall be the duty of each justice of the peace, once in every three months, to make out duplicate lists of all fines by him imposed to the use of his county, and state therein the name of the officer who hath or ought to have collected the same, and shall certify and deliver one of the said lists to the clerk of the tribunal for transacting of county business; and the said clerk shall charge the same accordingly.

Officers to render their accounts and settle with county court

SEC. 8. *Be it further enacted*, That all collectors, sheriffs, clerks, constables, and other persons chargeable with moneys belonging to any county, shall render their accounts to and settle with the tribunal transacting county business in such county, at each stated term, for all moneys which they have or ought to have collected for the use of such county, and pay into the county treasury any balance which may be due to such county, after deducting such allowance as shall be made by the said tribunal according to law.

Officers neglecting to render accts. and make settlements.

Proceeding to be *ex parte*

SEC. 9. *Be it further enacted*, That if any collector, sheriff, clerk, constable, or other person, shall neglect or refuse to render his accounts or make settlements as aforesaid, the said tribunal shall adjust the accounts of such delinquent, from the best information which they can obtain, and ascertain the balance due to the county as aforesaid; but in no such case shall any commission be allowed to such delinquent; *Provided*, That if such delinquent shall appear at the next stated session of such tribunal, and show good cause for his failing to render his accounts and make settlement, the said tribunal may revise such settlement, and may allow him commission or not, in their discretion.

Balances found due, the county to be paid forthwith.

SEC. 10. *Be it further enacted*, That the person against whom any balance may be found, shall without delay pay the same into the county treasury; and in all cases where any person shall pay money into the county treasury, the treasurer thereof shall make out duplicate receipts, signed by him as treasurer, and deliver the same to the person making such payment, who shall within five days thereafter deliver one of the said receipts to the clerk of the tribunal transacting county business for such county, and the said clerk shall thereupon credit such person with the amount, and charge the same to the treasurer.

Proceeding against delinquent failing to pay over.

SEC. 11. *Be it further enacted*, That if any person, against whom any balance may be found as aforesaid shall not pay the amount thereof, and produce to the clerk aforesaid the treasurer's receipt therefor, within ten days after such balance is ascertained, the said clerk shall charge such delinquent ten per centum on the amount then due; and

Penalty.

the tribunal aforesaid shall at their next term enter up judgment for the amount so due, and sixty per centum per annum until such balance shall be paid (with the addition of said penalty) and issue execution therefor, unless such delinquent shall appear on the first day of the term, and show to the said tribunal good cause for setting aside such settlement, in which case the court may examine the accounts, and settle and adjust the same according to law; and if such person shall immediately pay into the treasury any balance which may be found against him, and produce the treasurer's receipt therefor, the said tribunal may remit the said penalty.

Delinquent appearing, proceedings.

Sec. 12. *Be it further enacted*, That the amount or balance of every account, settled agreeable to this act, due to any county, shall be deemed and adjudged to be a lien, from the date of the settlement of such account, on all the real estate of the debtor within the county.

Balances due county to be a lien.

Sec. 13. *Be it further enacted*, That all accounts and vouchers, and other papers, appertaining to or concerning any account settled according to the provisions of this act, shall be filed in the office of the clerk of the tribunal in which such settlement is made; copies of which, or books, or any other documents, in said office, certified under the hand and official seal of said clerk, shall be admitted to be read in evidence, in all courts of law and elsewhere.

Accounts & vouchers to be preserved and filed.

Sec. 14. *Be it further enacted*, That when the tribunal for transacting county business, in any county, shall ascertain any sum or sums of money to be due from such county to any person, body politic or corporate, they shall order their clerk to issue a warrant therefor, in the following form, to wit—

Warrants to be granted for debts due by the county.

Form.

NO. ———

———, Treasurer of the county of ———, pay to ——— or order, ——— dollars, out of any money in the treasury, appropriated for county expenditures, (*or express the particular fund, as the case may require.*) Given at ———, this ——— day of ———, 18 .

$———

By order of (*the tribunal transacting county business.*)

A. B. President.

Test, C. D. Clerk.

Which warrants shall be signed by the presiding officer of said tribunal, and attested by the clerk, and shall be numbered progressively, beginning on the first day of January, and ending on the thirty-first day of December, in each year, and shall be immediately presented to the county treasurer, who shall countersign the same, and make a registry of the number, date, the name of the person in whose favor drawn, and the amount of each; which war-

To be countersigned and registered by the treasurer.

Receivable in payment of taxes, &c.

rants shall be paid out of any money in the county treasury, not otherwise appropriated, or out of the particular fund expressed therein; and such warrants shall be received in payment of all taxes, debts, fines, penalties, and forfeitures, accruing to the county.

Clerk and treasurer to keep an abstract of warrants.

SEC. 15. *Be it further enacted*, That it shall be the duty of the clerk of each tribunal as aforesaid, to keep a regular abstract of all warrants issued as aforesaid, in the following form—

No.	Date	In whose favor drawn	On what account	Amount		Remarks
				D.	C.	

And the county treasurer, shall keep a like abstract of all warrants by him paid or redeemed, varying the form only so far as to make it purport to be an abstract of warrants paid at the county treasury; and it shall be the duty of the said clerk and treasurer, when they make their report to the said tribunal, as required by this act, to transmit therewith a copy of their abstracts respectively, not before reported.

Power of courts to compel officers to settle.

Power of county court in making settlements.

May compel the production of accounts, papers, &c.

SEC. 16. *Be it further enacted*, That the several courts of record in this state, may compel the several clerks and sheriffs to settle with them, as required by this act, for money received to the use of any county, by attachment, or such other lawful process as to them shall seem expedient; and the several tribunals transacting county business may issue a summons, to require the attendance, before them, of all persons, whether party or witness, whom they may deem necessary to examine in the investigation of any account; and if any such person, being served with such summons, shall not appear according to the command thereof, the said court may compel his appearance, by attachment; and in order to procure the exhibition, or delivery to them, of any accounts, books, documents, or other papers, the said tribunal may issue a summons directed to the person in whose custody or care the said accounts, books, documents, or other papers, may be, commanding him to deliver or transmit the same to the said tribunal; which summons shall be served by the sheriff; and if the person named in such summons, refuse to appear with or transmit the accounts, books, documents, or papers, or show good cause why he doth not, at the time appointed for his appearance, the said tribunal may enforce the delivery thereof by attachment; and the said courts and tribunals, respectively, may examine all parties and witnesses, on oath, touching the investigation of any account, and may commit to jail, any person who shall refuse to answer any lawful question.

Compensation of treasurer and county clerk

SEC. 17. *Be it further enacted*, That the county treasurer, and clerk of the tribunal transacting county business, in each county, shall, for their services, respectively, under the provisions of this act, receive such compensation as to the said tribunal shall appear reasonable.

Wilful neglect or refusal to render accounts, deemed a misdemeanor.

SEC. 18. *Be it further enacted*, That if any clerk or sheriff, shall wilfully neglect or refuse to render his accounts, and settle with any court for moneys by him received, or which he ought to have received, to the use of any county, in the manner and at the times herein before prescribed, or shall knowingly render a false account, he shall be deemed and adjudged guilty of a misdemeanor in office, and proceeded against accordingly.

Suits may be brought to recover balances.

SEC. 19. *Be it further enacted*, That when any balance shall be found against any collector, clerk, sheriff, constable, or other persons, for moneys accruing to the county treasury, and the same shall not be paid within the time required by this act, it shall be lawful for the tribunal transacting county business, for the county, to order suits to be brought upon the bonds of such delinquent, against him and his securities, and the attorney general or circuit attorney, for the proper district, shall commence and prosecute the same accordingly.

Treasurer having funds and refusing to pay warrant.

Liable to pay fourfold,

And be removed from office.

SEC. 20. *Be it further enacted*, That if any warrant shall be drawn on the county treasury, according to the provisions of this act, in favor of any person or persons, body politic or corporate, and the same shall be presented to the county treasurer for payment, and the treasurer, at the time of such presentation, shall have in his hands, or be accountable for, sufficient moneys, applicable to the payment of such warrant, and shall refuse to pay the same, the said treasurer shall forfeit and pay to the holder of such warrant, fourfold the amount thereof, to be recovered by action of debt, to the use of the party aggrieved, against such treasurer and his securities upon his official bond, in any court having competent jurisdiction thereof; and such treasurer shall moreover be deemed guilty of a misdemeanor in office, and proceeded against accordingly, as in case of a clerk, and on conviction thereof, shall be removed from his office of treasurer.

[*Approved, February 11th,* 1825.]

COURTS.

CHAPTER I.

JUDICIAL POWER.

7 Jan. 1825.

AN ACT to establish Courts of Justice, and prescribe their powers and duties.*

*See constitution, art 5, and amendments, 1, 2.

Supreme, circuit, probate and county courts established.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That there shall be a supreme court, which shall be holden at such times and places as shall be prescribed by law, circuit courts, probate courts, and tribunals for the transaction of county business to be styled county courts, which shall be holden in each county as often and at such times and places as shall from time to time be prescribed by law.

Judges of supreme and circuit court, qualifications

Oath of office

Statement of age to be made on oath.

SEC. 2. *Be it further enacted*, That every judge of the supreme or any circuit court shall previously to his appointment have resided one year in this state, and after his appointment shall be commissioned by the governor, and shall, within sixty days after the receipt of his commission, and before entering upon the duties of his office, take an oath, before any judge or justice of the peace, to support the constitution of the United States and of this state, and faithfully to demean himself in office, a certificate of the taking of which oath shall be endorsed on his commission; and shall, moreover, within sixty days after the receipt of his commission, cause to be filed in the office of the secretary of state a true statement of his age, to the best of his knowledge and belief, verified by oath or affirmation, which statement shall be received as conclusive evidence of the facts therein stated, in all courts and places where the same may be drawn in question.

Supreme court jurisdiction.

†See constitution art. 5, sec. 2, 3, amendments 1, 2.

Charges against clerks.

‡Constitution, art. 5, sec. 15.

SEC. 3. *Be it further enacted*, That the supreme court, in cases not specially provided for by the constitution, shall, in matters of law, have jurisdiction only in writs of error and appeals from final judgments and decisions, and in all matters of equity, in appeals from the final decrees, judgments and orders of the circuit courts in their respective districts, where the matter in controversy shall be of the value of one hundred dollars exclusive of the costs; and in all cases, both at law and equity, where the title to lands or the boundaries thereof are drawn in question, or where lands or slaves shall be the subject of the judgment, decree or order.† They shall have power to try, hear and determine all charges made and exhibited against any clerk for misdemeanor in office, and upon conviction to remove him from office, and impose such other penalty as may be prescribed by law.‡ They shall have power to direct the form of writs and process, not being contrary or

Writs and process.

Opinions.

inconsistent with the constitution and laws in force for the time being. The opinion of the court shall, in all cases, be reduced to writing and filed in the cause to which it relates.

Circuit court jurisdiction, at law.

See Cons. art. 5, sec. 6, 7, 8, 9, 10, 11; amendments 1, 2.

SEC. 4. *Be it further enacted*, That the circuit courts, in the respective counties in which they may be held, shall have jurisdiction, as courts of law, in all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction in all civil cases which shall not be cognizable before the inferior tribunals or justices of the peace. They shall have concurrent original jurisdiction, with the said inferior tribunals and justices of the peace, in actions of tort, and in all cases which are not by law exclusively cognizable before such tribunals or justices of the peace, where the matter in controversy shall be of the value of fifty dollars, or the titles or boundaries to lands are drawn in question, or lands or slaves are the subject of controversy. They shall exercise appellate jurisdiction from the judgments and orders of the said inferior tribunals and justices of the peace, in all cases not expressly prohibited by law, and shall possess a superintending control over them. And the said circuit courts shall, as courts of equity, have exclusive original jurisdiction in each county in which they may be held, in all cases where adequate relief cannot be had by the ordinary course of proceeding at law; and shall have a general control over executors and administrators, guardians, minors, idiots, lunatics, and persons of unsound mind, and shall proceed therein according to the rules, usages and practice of courts of equity, unless otherwise provided for by law.

As courts of equity.

Judge of probate to be appointed.

Qualifications

Term of service.

Oath.

SEC. 5. *Be it further enacted*, That the governor shall nominate, and by and with the advice and consent of the senate appoint, in every county of this state, one competent person to be judge of the probate court of such county, who shall be at least twenty-two years of age, a citizen of the United States, and shall have resided in this state one year previous to his appointment, and be a resident of the county for which he is appointed at the time of his appointment. He shall hold his office for the period of four years, and until his successor is duly commissioned and qualified, unless sooner removed from office; and in case of vacancy in the recess of the senate, the governor may supply such vacancy by appointing some person possessing the qualifications aforesaid, who shall hold his office until the end of the next session of the senate, and until his successor is commissioned and qualified. And every judge of the probate court, before entering upon the duties of his office, shall take the like oath as is required to be taken by the circuit judges, and may be removed from office by impeachment, or in the same manner and for the same causes as any circuit judge. He shall receive such fees for his services as may be allowed by law, to be paid by the parties respectively at whose instance the services are rendered, subject however to be taxed as costs against the unsuccessful party according to law.

Compensation.

Probate court jurisdiction.

SEC. 6. *Be it further enacted*, That the several courts of probate shall have exclusive original jurisdiction in all cases relative to the probate of last wills and testaments, the granting letters testamentary and of administration and repealing the same, appointing or displacing guardians of orphans, minors and persons of unsound mind, in binding out apprentices, and in the settlement and allowance of accounts of executors, administrators and guardians; to hear and determine all disputes and controversies whatsoever respecting wills, the right of executorship, administration or guardianship, or respecting the duties or accounts of executors, administrators or guardians, and all disputes and controversies between masters and their apprentices; to hear and determine all suits and other proceeding instituted against executors and administrators, upon any demand against the estate of their testator or intestate, where such demand shall not exceed two hundred dollars,—and concurrent jurisdiction with the circuit court, in all such cases, where the demand shall exceed that sum, subject to appeal in all cases to the circuit court in such manner as may be provided by law. They shall have power to award process, and cause to come before them all and every person or persons whom they may deem it necessary to examine, whether parties or witnesses, or who as executors, administrators or guardians, or otherwise, shall be interested, or in any wise accountable for any lands, tenements, goods or chattels, belonging to or which shall belong to any minor, orphan or person of unsound mind, or to the estate of any deceased person, and may examine all and every person on oath or affirmation touching any matter of controversy before them: *Provided nevertheless*, That in all such suits instituted in the circuit court against executors and administrators, upon such demands, where the plaintiff recovers less than the sum of two hundred dollars, such judgment shall be effectual in law to all intents and purposes, as a judgment of said circuit court; but the plaintiff shall pay all costs which shall have accrued in said suit: *Provided also*, That all suits which may be pending in any circuit court against any testator or intestate at the time of his or her death, and

Recovery in circuit court under $200, no costs allowed.

which by law survive, may be revived against his or her executors and administrators, and prosecuted to final end and determination in the circuit court.

County court how constituted.

SEC. 7. *Be it further enacted*, That the county courts shall be composed of the justices of the peace in the several counties, (the clerk of such court excepted if he be a justice of the peace) in manner following, that is to say: the county court of each county, shall keep a regular list or roster of all the justices of the peace within their county, making from time to time such alterations therein as shall become necessary by occasion of deaths, resignations, removals, or new appointments, so that the same shall at all times be a complete list of all the justices of their county; and it shall be the duty of the several county courts, at their first term to be holden in their county in each year, to designate not less than three nor more than seven of the said justices, to serve as justices of the county court, for the ensuing year, appointing the said justices, so to be designated, as near as may be among the several townships, and observing a regular rotation of service among the justices in each township, so that no justice who has once served as justice of the county court, for one whole year, shall be again required to perform that service, until all the justices, then in his township, shall have served the like term in the county court, or the list be exhausted. And if at any time the said court shall not sit at the term first to be holden in any year, or shall fail to make a designation of the justices to serve for the ensuing year, the clerk of said court shall make such designation, and shall have as full and ample power for that purpose, as the court: *Provided*, That for the purpose of constituting the county court for the first year, all the justices of the peace in each county, or a majority thereof, shall meet at the place of holding courts in their respective counties, on the first Monday of March next, and then and there designate not less than three nor more than seven of the justices, of their county, to be justices of the county court for the first year.

First court.

Notices to be given to justices designated to serve in the county court

SEC. 8. *Be it further enacted*, That when any justice of the peace shall be designated to serve as a justice of the county court, as aforesaid, it shall be the duty of the court or clerk, to deliver to the sheriff of the county, a copy of the order making such designation, which shall be served by the sheriff, on each of the justices therein designated, fifteen days at least before the commencement of the first term at which he is required to attend; and it shall be the duty of all justices, so designated and notified, to serve as justices of the county court, for one year; and it shall be the duty of the sheriff, on the first day of the first term of the county court in his county, which may be holden after each designation as aforesaid, to return the said order, with his proceedings thereon, to the county court.

Vacancies in county court how supplied

SEC. 9. *Be it further enacted*, That if any vacancy shall happen in any county court, by reason of death, resignation, removal from office, or otherwise, it shall be the duty of the county court, or clerk, in vacation, to designate and cause to be notified, in manner aforesaid, some other justice of the peace, to supply such vacancy; and so on as often as occasion may require.

Penalty on sheriff neglecting to serve notices

SEC. 10. *Be it further enacted*, That if any sheriff shall neglect or refuse to serve any order on any justice, as required by this act, he shall forfeit and pay a sum not exceeding twenty dollars, in the discretion of the court, to be recovered by indictment, to the use of the county.

Majority of justices, constitute a quorum.

SEC. 11. *Be it further enacted*, That a majority of all the justices of the county court, shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may require the attendance of absent members.

President to be chosen.

SEC. 12. *Be it further enacted*, That justices of the county courts respectively, or a majority of them, shall choose one of their own number, to be president of the county court; and in case of his absence, may appoint a president *pro tempore;* and may by their appointment supply any vacancy which may occur in the office of president.

Terms of the county courts, four annually.

SEC. 13. *Be it further enacted*, That each county court shall hold four stated terms annually, at the place of holding courts in their respective counties, commencing on the first Mondays in February, May, August, and November; but each county court may alter the time of holding their stated meetings, giving public notice of such alterations, in such manner as to them shall seem expedient; they may hold special terms, at any time which they may appoint; and the president, or any two justices of the court, may at any time call a meeting, when the business of the county shall require it, by notice in writing, directed to the respective justices, and delivered to them, or left at their respective places of abode, five days prior to the day appointed for the meeting, and stating therein the time, business, object and purpose of the meeting, which notice shall be served by the sheriff.

Power, jurisdiction & authority of county court

SEC. 14. *Be it further enacted*, That the county courts shall have, in their respective counties, the control and management of the property, real and personal, belonging to their county, and shall have full power and authority to purchase, or receive by donation, any property, real and personal, to and for the use and benefit of their county; to sell and cause to be conveyed, any lands, tenements, hereditaments, goods or chattels, belonging to their county, appropriating the proceeds of such sale to the use of the county; they shall have power to cause to be erected, repaired, and kept in repair, all county buildings and public bridges, within their county, in such manner as is or shall be provided by law; to levy and assess county taxes, cause the same to be collected, and to manage and appropriate the county revenue according to law; to audit and settle all demands against their county; to settle and adjust the accounts of all officers concerned in the collection of the revenue; they shall have jurisdiction, power and authority, to do all things relating to the appointment of constables, assessors and collectors of the revenue, and judges of elections; granting licenses; laying out, altering and discontinuing roads and highways; laying out townships, and fixing the boundaries thereof; providing and causing to be kept and preserved, standard weights and measures; establishing prison bounds, and providing for the support and maintenance of paupers, prisoners, and other persons becoming chargeable to the county; and they shall have full power, jurisdiction, and authority, to do and perform all things necessary and proper, relating to or concerning any of the matters aforesaid, or any other matter of county concern; and shall have such other powers, and perform such duties, as may be enjoined on them by law.

Seal of court to be provided.

Sec. 15. *Be it further enacted*, That each of the courts hereby established, shall procure and keep a seal, with such emblems and devices as the court shall think proper, (where the same is not already provided) and until such seal is provided, the clerk of the court (or judge of the court, where there is no clerk) may use his private seal, in all cases where the seal of the court would be required; the expense of procuring such seal, with a screw and apparatus, shall be paid as other expenses of the courts respectively.*

***See also title "clerks," sec 5**

Courts to keep records; in the English tongue.

Sec. 16. *Be it further enacted*, That all courts established by this act, shall be courts of record, and shall keep just and faithful records of their proceedings; and the record of proceedings at law, shall be kept separate and distinct from the record of proceedings in equity; and all pleas and proceedings, which shall be pleaded or heard in any court of this state, shall be pleaded, defended, answered, debated, judged, entered and enrolled in the English tongue, and all writs, process and returns thereof, and all proceedings therein, and all pleadings, rules, or orders, indictments, informations, inquisitions, verdicts, prohibitions, certificates, records, judgments, recognizances, rolls, entries, and all proceedings whatsoever, in any court of this state, shall be in the English tongue and language only, and shall be printed or written in a good strong legible hand and characters, and in words at length, and not abbreviated, except such abbreviations as are now commonly used in the English language; but it shall and may be lawful to express numbers by figures, and the proper and known names of writs, or process, or technical words, in the same language as hath been commonly used, so as the same be legibly printed or written; and the several courts shall cause, at each term thereof, the proceedings of the term immediately preceding to be read in open court, unless such record and proceedings were made up and read at such previous term.

Power of courts to issue necessary writs.

Sec. 17. *Be it further enacted*, That the several courts aforesaid shall respectively have power to issue all writs which may be necessary in the exercise of their respective jurisdictions, according to the principles and usages of law; and where there is no sheriff or coroner, or neither of them qualified to act, or both interested or prejudiced, the courts may, respectively, appoint one or more persons to execute their process, and perform any other duty of the sheriff, who shall be entitled to such fees for his services, as are allowed by law to sheriffs in like cases; and the said courts respectively, may from time to time appoint interpreters and translators, to interpret the testimony of witnesses, and translate any writings, papers, and documents, necessary to be translated in such court or any cause therein, who shall be sworn faithfully to interpret and translate, according to the best of their abilities, all things which they may be required by the court to interpret or translate, touching any cause in such court, and shall receive such compensation for their services in each cause, as the courts shall deem reasonable, to be allowed, taxed and collected as other costs.

May appoint elizors, in certain cases

Interpreters & translators

Oath of interpreter.

Courts, compel return of writs, and payment of money, by attachment.

Sec. 18. *Be it further enacted*, That each court hereby established, shall have power to enforce by attachment the return of any writ or process, sued out of the same court, and the payment of any moneys had and received by any sheriff, coroner, justice of the peace, constable, attorney, collector, or solicitor, in his official capacity, and delivery of papers entrusted to him officially, and unlawfully withheld: *Provided*, That any of the persons aforesaid may retain any fees or other moneys due them, or any papers until their fees are paid.

Court may punish contempt.

Sec. 19. *Be it further enacted*, That the several courts aforesaid, shall respectively have power to punish, by fine and imprisonment, the officers of their courts respectively, for any official misconduct; and all such officers, parties, jurors, and witnesses, for any disobedience of process of the court; and any person whatsoever, for any contempt by him committed towards such court, or for any disorderly or contemptuous behavior, in their presence, while in session, or in any manner obstructing the administration of justice, and to issue attachments against any person so offending; but in no case shall the fine exceed one hundred dollars, nor the imprisonment be for a longer period than thirty days, and until the fine and costs are paid.

By fine not exceeding $100, and imprisonment not exceeding 30 days.

Judges, when necessary, may hold adjourned terms.

SEC. 20. *Be it further enacted*, That the judges of the several courts hereby established, shall, when necessary from sickness, other unavoidable cause, or for despatch of business, hold special adjourned sessions of their respective courts, in continuation of any regular term; and for that purpose may adjourn, at any time in term, to any day antecedent to the next stated term of such court, so as not to interfere with any other court to be holden by the same judges; and such special adjourned session shall be held accordingly, and be deemed and considered, to all intents and purposes, a continuation of the regular term, and all process shall be returned, and persons held to appear, accordingly.

Judges not appearing first day, court to stand adjourned, to 3d day.

Failing to sit after commencement of term.

Adjourned term may be ordered.

SEC. 21. *Be it further enacted*, That if the judge of any court, or a majority of them, do not appear and hold their court on the first day of any term, such court shall stand adjourned from day to day until the evening of the third day, when if a sufficient number of judges shall not have appeared and opened court, such court shall stand adjourned until the next regular term thereof. And if at any time after the commencement of any term it shall happen that the court shall not be held according to its adjournment, the court shall stand adjourned from day to day until the evening of the third day; and if the judges shall appear and hold court within that time, there shall be no discontinuance or lapse of the term, and the court may proceed as if it had been regularly held according to its adjournment; but if the court do not sit within that time, it shall stand adjourned until the next regular term. And it shall and may be lawful, in any of the cases aforesaid, for the judges of such court, or a majority of them, at any time before their court shall be finally adjourned as aforesaid, to make an order in writing, directed to the sheriff of the county in which the court is to be held, commanding him to adjourn the said court to the next regular term, or to any day antecedent thereto, as to them shall seem expedient, so as not to interfere with any other court to be holden by the same judges, which order shall be recorded among the records of the court,—and the sheriff shall thereupon adjourn such court according to such order, by public proclamation at the court house door; and the court shall be held according to such adjournment. And in cases where the adjournment shall be to a day antecedent to the next regular term, the session held in pursuance thereof shall be deemed and taken to all intents and purposes to be a continuation of the regular term in which the adjournment was made, and all processs shall be returned, all persons held to appear, and proceedings had accordingly.

No suit, process, &c discontinued or abated by adjournment of court or lapse of term

SEC. 22. *Be it further enacted*, That no writ, process, plea or proceeding whatsoever, civil or criminal, shall be deemed discontinued or abated, by reason of the failure of any term or session of any court, nor by reason of any adjournment in the cases mentioned in the preceding section, or otherwise, before the business pending in such court is disposed of, but the same shall be continued and proceeded upon as if no such failure or adjournment had happened.

Judge, interested, or related to either party, not to sit.

SEC. 23. *Be it further enacted*, That no judge of the supreme court, who is interested in any suit or related to either party, or who shall have been of counsel in any suit or action which now is or hereafter may be pending in said court, shall sit on the determination thereof, if a court can be formed without such judge; nor shall any judge of the circuit or probate court sit on the determination of any cause or proceeding, either civil or criminal, in which he is interested or related to either party, or who shall have been of counsel; but such cause or proceeding, if pending in the circuit court, shall be removed to some county where such objection does not exist, according to law,—and if pending in any probate court, such cause or proceeding shall be removed to the circuit court of the same county, which shall proceed therein in all things as the probate court might have done; and a transcript of the record and proceedings of the probate court therein, together with the original papers thereto appertaining, shall be filed in the office of the clerk of the circuit court, and such clerk shall be entitled to the same fees for his services therein as the judge of probate would be entitled to for like services: *Provided*, That in no criminal cases shall the venue be changed without the consent of the defendant.

Courts and judges may take proof of deeds.

SEC. 24. *Be it further enacted*, That the several courts hereby established, or any of the judges thereof, shall have power to take the proof and acknowledgment of deeds, mortgages, conveyances, and other writings of or concerning lands, tenements or hereditaments, or other property, real and personal, lying and being in any part of this state, and the relinquishment of dower therein; and each of

Judges, conservators of the peace; may solemnize matrimony; shall not practice law.

Justices of the peace exempt from certain duties.

the said judges shall be conservators of the peace, and may administer oaths and solemnize matrimony. No judge of the supreme or circuit court shall practice as an attorney or counsellor at law, during his continuance in office, in any court or place whatsoever. All justices of the peace shall be exempt from the duties required of the inhabitants of their counties, in relation to the working on roads and highways, serving as jurors, and performing military duty in time of peace; but shall not be entitled to ask, demand or receive any fees or other compensation for their services as justices of the county court.

Sheriffs to attend courts and purchase fuel, stationary, &c.

Accounts to be audited and expenses paid.

SEC. 2[illegible]. *Be it further enacted*, That it shall be the duty of the several sheriffs, by themselves or deputy, to attend each court held in their counties respectively; and the said sheriffs shall be and they are hereby authorized and required to furnish all blank books, stationary, fuel, and other things which may be necessary for the use of the courts held in their counties respectively, whenever they shall be thereunto ordered or directed, or required by the said courts; and it shall be the duty of the several courts to audit and adjust the accounts of said sheriffs for all expenditures made pursuant to this section, and to certify the balance accordingly. And all such expenditures accruing in the supreme court, shall be paid out of the state treasury,—and the auditor of public accounts shall draw his warrants accordingly, for which the certificates of the said courts, attested by the seal of the courts, shall be sufficient vouchers; and all expenditures accruing in any other court or tribunal, shall be paid out of the county treasury of the county in which the court or tribunal is held, in the same manner as other demands.

Business of old courts transferred.

SEC. 2[illegible]. *Be it further enacted*, That all process, proceedings, matters and business, the jurisdiction of which is by this or any other act of the general assembly vested in the probate court, and which may be pending in the county courts, as heretofore organized, at the taking effect of this act or other act vesting such jurisdiction, shall be and is hereby removed into the probate court hereby established for final judgment, decision, order, decree and adjudication. And it shall be the duty of the clerks of the county court and other courts in the several counties heretofore established, respectively, immediately after the taking effect of this act, or as soon thereafter as a judge of the probate court shall be appointed and commissioned for the county of which he is clerk, to deliver to said judge all papers, documents, and other things relating to any matter the jurisdiction whereof is or shall be vested in the probate court hereby established, and together with all records which relate exclusively to such business; and where such record has been kept in books together with the record of other matters not vested in said probate court, it shall be the duty of the said clerks (if the judge of the probate court requires it) to cause the same to be transcribed and recorded in a separate book, to be provided by the judge of the probate court for that purpose.

Clerks of courts not removed from office.

Cty. courts to continue to act until, &c.

SEC. 27. *Be it further enacted*, That nothing herein contained shall be construed to vacate the office of any clerk of any of the courts now established by law; and each of the county courts heretofore established shall continue to exercise the jurisdiction and powers heretofore vested in them, and which are by this act vested in a probate court, until the first Monday in April next, and until a judge of probate shall be appointed and commissioned for their county; and they shall in like manner continue to exercise the jurisdiction vested by this act in the county courts hereby established, until such court shall be duly organized.

This act shall take effect and be in force from and after the passage thereof.

[*Approved*, *January* 7, 1825.]

CHAPTER II.

8 Feb. 1825.

AN ACT supplementary to an act to establish Courts of Justice, and prescribing their powers and duties.

Accounts heretofore allowed by courts, to be paid.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That all accounts which have been allowed by the several courts in this state to their officers, for stationary or for any other thing, shall be paid in the same manner as similar accounts, hereafter to be allowed, are directed to be paid under the act to which this is a supplement.

Clerks of supreme court allowed office rent.

SEC. 2. *Be it further enacted*, That the clerks of the supreme court, in their several districts, are authorized to procure suitable rooms in which shall be kept the records of court. And the said court shall audit the accounts of their clerks for office rent, allowing reasonable compensation for the same, to be paid out of the state treasury; and the auditor is hereby authorized to draw his warrants upon the treasury, from time to time, for the amount of the several accounts so allowed.

[*Approved*, *February* 8, 1825.]

CHAPTER III.

DISTRICTS—CIRCUITS—TERMS.

Feb. 5, 1825.

AN ACT to establish judicial districts and circuits, and prescribing the times and places of holding courts.

Judicial districts established.

Sec. 1. *Be it enacted by the general assembly of the state of Missouri*, That this state shall be and is hereby divided into four judicial districts, to wit—the counties of Boone, Howard, Chariton, Ray, Clay, Lillard, Saline, Cooper, and Cole, shall compose the first district; the counties of Callaway, Montgomery, St. Charles, Lincoln, Pike, and Ralls, shall compose the second district; the counties of Gasconade, Franklin, Washington, Jefferson, and St. Louis, shall compose the third district; the counties of New Madrid, Scott, Cape Girardeau, Perry, Ste. Genevieve, St. Francois, Madison, and Wayne, shall compose the fourth district.

Times and places of holding supreme court.

Sec. 2. *Be it further enacted*, That the supreme court shall be holden at the times and places following, to wit—for the first judicial district, at the town of Fayette, in the county of Howard, on the second Mondays of April, and fourth Mondays of September; for the second district, at the town of St. Charles, in the county of St. Charles, on the fourth Mondays of April and October; for the third district, at the city of St. Louis, in the county of St. Louis, on the first Mondays of May and November; for the fourth district, at the town of Jackson, in the county of Cape Girardeau, on the fourth Mondays of May and November.

Judicial circuits.

Sec. 3. *Be it further enacted*, That for the purpose of holding circuit courts, the counties composing the first judicial district, shall compose the first judicial circuit; the counties composing the second judicial district, shall compose the second judicial circuit; the counties composing the third judicial district, shall compose the third judicial circuit; and the counties composing the fourth judicial district, shall compose the fourth judicial circuit.

Terms of circuit courts.

1st circuit.

Sec. 4. *Be it further enacted*, That three terms of the circuit court shall be holden in the several counties in this state, in every year, at the places appointed for holding courts therein, at the times following, to wit—in the first judicial circuit, for the county of Boone, on the second Mondays of February, June, and October; for the county of Howard, on the third Mondays of February, June, and October; for the county of Chariton, on the first Mondays of March, July, and November; for the county of Ray, on the second Mondays of March, July, and November; for the county of Clay, on the first Thursdays after the second Mondays of March, July, and November; for the county of

Lillard, on the first Thursdays after the third Mondays of March, July, and November; for the county of Saline, on the first Thursdays after the fourth Mondays of March, July, and November; for the county of Cooper, on the first Mondays of April, August, and December; and for the county of Cole, on the second Mondays of April, August, and December. In the second judicial circuit, for the county of Lincoln, on the first Mondays of February, June, and October; for the county of Pike, on the first Thursdays after the first Mondays of February, June, and October; for the county of Ralls, on the first Thursdays after the second Mondays of February, June, and October; for the county of Montgomery, on the first Mondays of March, July, and November; for the county of Callaway, on the second Mondays of March, July and November; and for the county of St. Charles, on the third Mondays of March, July, and November. In the third judicial circuit, for the county of Gasconade, on the first Thursdays after the first Mondays of February, June, and October; for the county of Franklin, on the second Mondays of February, June, and October; for the county of Washington, on the third Mondays of February, June, and October; for the county of Jefferson, on the first Thursdays after the fourth Mondays of February, June, and October; for the county of Saint Louis, on the fourth Mondays of March, July, and November. In the fourth judicial circuit, for the county of New Madrid, on the first Mondays of February, June, and October; for the county of Scott, on the second Mondays of February, June, and October; for the county of Wayne, on the fourth Mondays of February, June, and October; for the county of Madison, on the first Mondays of March, July, and November; for the county of St. Francois, on the first Thursdays after the first Mondays of March, July, and November; for the county of Ste. Genevieve, on the second Mondays of March, July, and November; for the county of Perry, on the third Mondays of March, July, and November; and for the county of Cape Girardeau, on the second Mondays of April, August, and December.

2d circuit.

3d circuit.

4th circuit.

Terms of probate courts.

Sec. 5. *Be it further enacted*, That four terms of the probate court shall be holden in each county in every year, at the places appointed for holding courts therein respectively, at the times following, to wit: For the counties of Howard, Ray, Saline, Ralls, Callaway, Franklin, Wayne and Ste. Genevieve, on the first Mondays of March, June, September and December; for the counties of Chariton, Lillard, Cooper, St. Charles, Gasconade, Jefferson and Madison, on the second Mondays of March, June, September and December; for the counties of Boone, Cole, Pike, Montgomery, St. Louis, Scott, St. François and Cape Girardeau, on the third Mondays of March, June, September and December; and for the counties of Clay, Lincoln, Washington and Perry, on the fourth Mondays of March, June, September and December; and for the county of New-Madrid, on the first Mondays of January, April, July and October.

Suits, process, &c continued.

Sec. 6. *Be it further enacted*, That all suits and process, made or to be made returnable to the next terms of the several courts as heretofore established by law, shall be returnable to the first terms of the respective courts to be holden by virtue of this act. And all sales of property, which would have been made at the first terms as heretofore established, shall be made during the first terms to be holden by virtue of this act. In all cases where the sale of property may have been advertised to be made on any day of the terms as heretofore established, to satisfy any execution returnable to such term, the said sale shall be made on the same day of the term to be holden by virtue of this act.

Act to be published.

Sec. 7. *Be it further enacted*, That it shall be the duty of the secretary of state, immediately after the passage of this act, to cause the same to be copied, and published in one newspaper printed in each of the circuits in this state.

This act shall take effect and be in force from and after the passage.

[*Approved, February* 5, 1825.]

CRIMES AND MISDEMEANORS.

CHAPTER I.

DEFINITION AND PUNISHMENT.

AN ACT concerning Crimes and Punishments.

July 4, 1825.

Treason.

***Constitution, art 13, sec 15**

Punishment.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That every person who shall commit treason against this state, by levying war against the same, or by adhering to the enemies thereof, giving them aid and comfort, and shall thereof be duly convicted, shall suffer death.*

Misprison of treason.

Sec. 2. *Be it further enacted*, That every person owing allegiance to this state, who shall endeavor to join the enemies of this state, or shall use his or her influence to persuade or induce others to join, aid or comfort them, or shall have knowledge of any person or persons endeavoring or using their influence as aforesaid, or shall have knowledge of any person or persons having committed treason or about to commit treason within this state, and shall conceal the same, shall be deemed guilty of misprison of treason, and, on conviction, shall be imprisoned not exceeding seven years, or fined in a sum not exceeding one thousand dollars, or both, at the discretion of the court in which the conviction shall be had.

Punishment.

Murder.

Punishment.

Sec. 3. *Be it further enacted*, That every person who shall commit murder within this state, shall, on being thereof convicted, suffer death.

Homicide.

Sec. 4. *Be it further enacted*, That if any person or persons shall stab or thrust any person or persons who hath not then a weapon drawn, or that hath not then first stricken the party who shall so stab or thrust, so as the person or persons so stabbed or thrust shall thereof die within the space of six months then next following, although it cannot be proved that the same was done of malice aforethought, every such unlawful killing shall be adjudged, taken and deemed wilful murder. But this shall not extend to any person killing another in his or her defence, or by misfortune; nor to any person who, in keeping or preserving the peace, shall chance to kill any person or persons, so as such killing be not done wittingly, willingly and of purpose, under pretext and color of keeping the peace.

Shall be deemed murder.

Not to extend to homicide in self defence.

Homicide excusable at common law, considered as justifiable

Sec. 5. *Be it further enacted*, That hereafter, in all cases which at the common law, would be deemed excusable homicide, shall be considered as justifiable homicide, and the party shall be fully acquitted accordingly.

Manslaughter.

Punishment.

Sec. 6. *Be it further enacted*, That if any person shall within this state, commit the crime of manslaughter, and shall thereof be convicted, such person shall be imprisoned not exceeding three years, and fined not exceeding three thousand dollars.

Involuntary homicide in the commission of an unlawful act, may be prosecuted as a misdemeanor.

Punishment.

Sec. 7. *Be it further enacted*, That whenever any person shall be charged with involuntary homicide, happening in the commission of an unlawful act, the probable consequence of which would not be death, it shall be lawful for the attorney-general, or other person prosecuting for the state, to waive the felony, and proceed against and charge such person with a misdemeanor, and to give in evidence any act or acts of manslaughter, and such person, on conviction, shall be fined not exceeding one thousand dollars, and imprisoned not exceeding one year; or the prosecutor may charge both offences in the indictment,—in which case, the jury may acquit the party of the one, and find him or her guilty of the other charges.

Sec. 8. *Be it further enacted*, That if any person within

Maiming.

this state, on purpose and of malice aforethought, shall unlawfully cut or bite off the ear or ears, or cut out or disable the tongue, put out an eye, or slit, cut or bite off the nose, or lip, or in any wise injure any of the members aforesaid, with intent to maim or disfigure such person, or shall cut off or disable any limb or member of any person with the intent aforesaid, or shall shoot at or stab with any weapon with intent to kill, or with intent to maim or injure any person in any member before mentioned,—then and in every such case the person or persons so offending, their aiders, abettors or counsellors, knowing of and privy to the offence aforesaid, shall, on conviction, be imprisoned not exceeding three years, and fined not exceeding three thousand dollars.

Punishment.

Rape.

SEC. 9. *Be it further enacted*, That every person who shall commit the crime of rape, and be thereof duly convicted, shall be sentenced to castration, to be performed under the direction of the sheriff, by some skilful person, at the expense of the state in case the party convicted, shall not have sufficient property to pay the same and costs.

Punishment.

What deemed rape.

SEC. 10. *Be it further enacted*, That every person who shall carnally know and abuse any female child under the age of ten years, and shall be thereof duly convicted, shall be deemed guilty of a rape, and punished accordingly.

Assault with intent to commit rape, or murder.

SEC. 11. *Be it further enacted*, That every person who shall, with actual violence, an assault make on the body of any female with an intention to commit a rape, or upon the body of any person with an intention him or her to kill, and shall be thereof duly convicted, shall be imprisoned not exceeding seven years, and fined not exceeding three thousand dollars.

Punishment.

Administering poison with intent to murder.

SEC. 12. *Be it further enacted*, That every person who shall wilfully and maliciously administer or cause to be administered to or taken by any person, any poison, or other noxious poisonous or destructive substance or liquid, with an intention him or her thereby to murder, or thereby to cause or procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall suffer imprisonment not exceeding seven years, and be fined not exceeding three thousand dollars.

Punishment.

Kidnapping.

SEC. 13. *Be it further enacted*, That every person who shall kidnap, or forcibly or fraudulently carry off or decoy, out of this state, any free person or persons, entitled to freedom, knowing such person to be free or entitled to freedom, or shall arrest or imprison any free person or persons, entitled to freedom, knowing such person to be free or entitled to freedom, with an intention to have such person carried out of this state, or of making such person a slave; or if any person shall steal any free person with an intention of making him or her a slave, or shall sell any free person for a slave, knowing the said person so sold to be free, and shall thereof be lawfully convicted, shall receive any number of lashes not exceeding thirty-nine, and suffer imprisonment during ten years, unless the person so kidnapped, stolen, or enslaved, shall in the mean time be restored to freedom, in which case, upon due proof thereof, made to the circuit court of the county where the conviction was had, the offender, by order of said court, may be set at liberty, upon paying the costs of his prosecution and imprisonment, and such fine as the court may see fit to impose, not exceeding one thousand dollars.

Punishment.

Assault and battery.

Fine.

*See also ante title 'assault and battery.'

Sec. 14. *Be it further enacted*, That if any person shall unlawfully assault, or shall strike, or wound, another, he shall, upon conviction thereof, be fined in a sum not exceeding one hundred dollars; and the court before which such conviction shall be had, may in their discretion, cause the offender to enter into a recognizance, with security, for the peace and good behavior, for a term not exceeding one year.*

Maliciously burning or destroying public property.

Punishment.

Sec. 15. *Be it further enacted*, That every person who shall wilfully and maliciously burn or destroy any magazine of provision, or of military or of naval stores, belonging to this state, or subject to the jurisdiction thereof; or shall wilfully and maliciously burn, any state house, court house, county house, town house, arsenal, magazine, prison, gaol, work house, poor house, hospital, market house, or other buildings, belonging to this state, or to any county, town, city, borough, village, corporation, or society in this state; or any church, chapel, meeting house, or other buildings used for public worship; or any college, academy, school house or other buildings used for literary instructions; and shall be thereof duly convicted, shall be imprisoned, not exceeding seven years, and fined, not exceeding ten thousand dollars.

Arson.

Punishment.

Sec. 16. *Be it further enacted*, That every person who shall commit arson, within this state, and shall be thereof duly convicted, shall be imprisoned, not exceeding seven nor less than one year, at the discretion of the court, and be fined, not exceeding ten thousand dollars.

Burning vessels, store houses, &c.

Punishment.

Sec. 17. *Be it further enacted*, That every person who shall wilfully burn, being the property of another, any ship, boat, or other vessel, any office, store, shop, warehouse, mill, distillery, brewery, or manufactory, or any barn, stable, or other out house, not parcel of any dwelling house, and shall be thereof duly convicted, shall suffer imprisonment, not exceeding seven years, and be fined, not exceeding ten thousand dollars.

Burning houses, with intent to defraud underwriters.

Sec. 18. *Be it further enacted*, That every person, being the owner or tenant of any dwelling house, out house, office, store, shop, warehouse, mill, distillery, brewery, or manufactory, who shall wilfully burn the same, with an intention thereby to defraud or prejudice any person or body politic or corporate, that hath underwritten or shall underwrite, any policy or policies of insurance thereon, or on any goods, wares, or merchandize, therein, and shall thereof be duly convicted, shall be imprisoned, not exceeding seven years, and fined, not exceeding ten thousand dollars.

Punishment.

Burning, casting away vessels, to defraud underwriters.

Sec. 19. *Be it further enacted*, That every person being the owner of, or captain, master, officer, mariner, or other person, belonging to any ship, boat, or other vessel, who shall wilfully cast away, burn, or otherwise destroy the ship, boat, or vessel, of which he is owner, or to which he belongeth, with an intention thereby to defraud or prejudice any person, or body politic or corporate, that hath underwritten or shall underwrite, any policy or policies of insurance thereon, or on the cargo thereof, or thereby to defraud any person who hath laden goods thereon, or who shall lade goods thereon, or any owner or owners of such ship, boat, or vessel, and shall be thereof duly convicted, shall be imprisoned, not exceeding seven years, and fined, not exceeding ten thousand dollars.

Punishment.

Burglary.

1st instance.

Sec. 20. *Be it further enacted*, That if any person or persons shall, in the night season, break open and enter any dwelling house, shop, store, or vessel, in which any person or persons dwell or reside, with an intention to commit a felony, he or they, so offending, shall be deemed guilty of *burglary*; and on conviction thereof, shall be fined, not exceeding five hundred dollars, and be imprisoned, not exceeding seven years.

Punishment.

2d instance.

And further, if any person or persons, so breaking and entering any dwelling house, shop, store, or vessel, aforesaid, shall steal therefrom any money, goods, or chattels, or any thing which may be the subject of larceny, he or they, so offending, shall, on conviction thereof, moreover, be fined, in treble the value of the thing stolen; the one third part of which, shall go to the party from whom the same has been stolen, and the other two thirds to the use of the state; and be whipped on his naked back, not exceeding thirty-nine stripes.

Punishment.

3d instance.

And further, if the said person or persons, so breaking and entering any dwelling house, shop, store, or vessel, as aforesaid, shall commit, or attempt to commit, any personal abuse, force, or violence, or shall be armed with any dangerous weapon, so as clearly to indicate a violent intention, he or they, so offending, upon conviction thereof, shall, moreover, stand in the pillory, for the space of three hours, and be impris-

Punishment.

oned, not exceeding seven years, in addition to the former punishment.

Robbery. 1st instance. Punishment. 2d instance. Punishment.

SEC. 21. *Be it further enacted*, That if any person or persons shall feloniously and violently take any money, goods, or chattels, or effects, to any value, from the person of another, by putting him or her in fear, he or they, so offending, shall be deemed guilty of robbery; and on conviction, shall suffer as in the second instance of burglary. And whosoever shall commit such robbery, with personal abuse or violence, or shall be armed at the time with any dangerous weapon, so as clearly to indicate an intention of violence, he or they, so offending, shall, upon conviction thereof, suffer as in the third instance of burglary.

Assault with intent to rob. Punishment.

SEC. 22. *Be it further enacted*, That if any person shall unlawfully assault, or shall by menaces, or in or by any forcible or violent manner, demand any money, goods, chattels, or effects, of or from any other person or persons, with a felonious intent to rob or commit robbery upon such person or persons, and being thereof lawfully convicted, he shall suffer as in the first instance of burglary.

Homicide in the prosecution of robbery, burglary, &c. deemed murder. Other cases of homicide in the prosecution of an unlawful act.

SEC. 23. *Be it further enacted*, That if the death of an innocent person shall ensue from the prosecution of any burglary, robbery, or arson, or other unlawful act, the probable consequence of which might be death, although such death might happen against the will and intent of the party occasioning the same, yet the perpetrator or perpetrators, and the accessaries before the fact, shall be deemed guilty of murder: but in other cases, where death shall happen in the prosecution of an unlawful act, aside of the intent of the party, although the same, by the common law, might be adjudged murder, yet hereafter the same shall be deemed manslaughter, or a misdemeanor, only, and shall be punished as is provided in the seventh section of this act, in the case of involuntary homicide.

House breaking in day time. Punishment.

SEC. 24. *Be it further enacted*, That every person who shall break and enter the dwelling house, shop, store, warehouse, mill or other building of another, in the day time, with intent to steal therefrom, shall, on conviction, be whipped not exceeding thirty-nine stripes.

Larceny. 1st offence. Punishment.

SEC. 25. *Be it further enacted*, That if any person shall feloniously steal, take and carry away the money or personal goods or chattels or effects of another, he or they so offending shall be deemed guilty of larceny, and upon conviction thereof, shall, for the first offence, restore to the owner the thing stolen and pay to him the value thereof,—and if the thing stolen shall not be restored, shall pay to him double the value thereof, and shall be fined in any sum not exceeding double the value of the thing stolen, 2d offence.

Punishment.

Jury to find value.

Judgment.

and shall be whipped not exceeding thirty-nine stripes, and stand in the pillory not exceeding two hours; and upon a second conviction, restitution or payment shall be made to the owner as aforesaid, and the offender be fined in a sum not exceeding fourfold the value of the thing stolen, and shall be whipped not exceeding thirty-nine stripes to be well laid on his bare back, and stand in the pillory as aforesaid. The value of the said property shall be assessed by the jury trying the cause, or if by any means they neglect to find the value, another jury may be empanneled to ascertain the same, or if the parties consent, the value may be assessed by the court. And the restitution of the property, or the payment to be made to the owner as aforesaid, shall form a part of the judgment of the court to be rendered on the conviction, and shall be enforced in the same manner as the payment of the fine.

Larceny and robbery of choses in action.

Punishment.

Sec. 26. *Be it further enacted*, That if any person shall steal or take by robbery, or attempt to steal or take by robbery, any bank bill or note, bill of exchange, order, warrant, check, draft, bond, bill, or promissory note for the payment of any money or delivery of any property, or any certificate or public security of the United States, or any loan office certificate, auditor's warrant, or other certificate or public security of this state, or any county certificate or warrant, or any other writing being evidence of debt, or acknowledging the receipt of money or goods, or being the property of another person or persons, body politic or corporate, notwithstanding the said particulars, or any of them, may be termed in law chose in actions, it shall be deemed and construed an offence of the same nature, in the same degree, and in the same manner, and subject to the same punishment, as it would have been if the offender had stolen or taken by robbery, or attempt to steal or take by robbery, any other goods of the like value with the amount due or secured by and remaining unsatisfied on such bank bill or note, bill of exchange, order, warrant, draft, check, bond, bill, or promissory note or certificate, or other public security.

Larceny and robbery of charters, deeds, &c.

Releases, receipts, &c.

Sec. 27. *Be it further enacted*, That if any person shall steal or take by robbery any letters patent, charter, testament, will or deed, whether indented or not, or any covenant, assurance, lease, indenture of apprenticeship, articles of agreement, contracts, letter of attorney or other power, or any instrument of writing respecting any property real or personal, or any release, acquittance, voucher, receipt book, book of accounts, or other writing, being evidence of debt, adjustment or settlement, it shall be deemed an offence of the same nature, in the same degree, and in

Punishment.

the same manner, as if the offender had stolen or taken by robbery any goods or chattels, which were the subject of larceny at the common law, the punishment shall be according to the value or importance of the writing so taken or stolen, by fine not exceeding five hundred dollars, and imprisonment not exceeding one year, and whipping not exceeding thirty-nine stripes.

Stealing and falsifying records, process, &c.

Punishment.

SEC. 28. *Be it further enacted*, That if any person shall feloniously steal, take away, alter, falsify, or otherwise avoid, any record belonging to any of the public offices of this state, or any record, writ, process, or other proceeding in any of the courts of this state; every such person, on conviction thereof, shall be fined, not exceeding five thousand dollars, and imprisoned, not exceeding seven years, and whipped, not exceeding thirty-nine stripes: *Provided*, That nothing herein contained shall extend to any amendment or entry, made or to be made by any rule, order, judgment, or decree, of any court.

Embezzlement by servants, apprentices, &c. deemed larceny.

Punishment.

SEC. 29. *Be it further enacted*, That if any clerk, apprentice, or servant, whether bound or hired, to whom any money, bank bill or note, or goods, or chattels, shall be entrusted or delivered by his or her master or mistress, shall withdraw himself or herself from his or her said master or mistress, and go away with the said money, bank bill or note, or goods, or chattels, or any part thereof, with intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed, by his or her said master or mistress; or being in the service of his or her said master or mistress, shall embezzle the said money, bank bill or note, or goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same; then, in every such case, the person so offending shall be deemed guilty of larceny, and be punished accordingly: *Provided*, That this clause or section shall not extend to any clerk, apprentice, or servant, within the age of fourteen years.

Conversion by bailee with intent to steal

Punishment.

SEC. 30. *Be it further enacted*, That if any bailee of any money, bank bills or notes, or goods or chattels, shall convert the same to his own use, with an intent to steal the same, he shall be deemed guilty of larceny, in the same manner as if the original taking had been felonious, and on conviction, shall be punished accordingly.

Embezzlement by lodgers, &c. deemed larceny.

Punishment.

SEC. 31. *Be it further enacted*, That if any lodger shall take away, with intent to steal, embezzle, or purloin, any bedding, furniture, goods, or chattels, which he or she is to use in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction, shall be punished accordingly.

Stealing slaves. Punishment. Disqualification.

SEC. 32. *Be it further enacted,* That if any person or persons shall steal any slave out of or from the possession of the owner or overseer of such slave, the person or persons so offending, shall be deemed guilty of felony, and on conviction, shall be fined in double the value of the property stolen, restore the property and pay the value thereof to the party injured, and in default of restitution, pay double damages, receive not exceeding thirty-nine stripes on his bare back, well laid on, and shall be disqualified from voting at any election, or of giving evidence, or serving as a juror in any court, or of holding any office of honor, profit, or trust, in this state; and unless restitution of the property shall be made, shall also be imprisoned, not exceeding ten years; and if the property be restored before the expiration of the term of imprisonment, upon due proof thereof, made to the circuit court of the county where the conviction was had, the balance of the term of imprisonment may be remitted.

Horse stealing. Punishment. Disqualification.

SEC. 33. *Be it further enacted,* That if any person or persons shall steal from any other person or persons, in this state, any horse, mare, gelding, mule, or ass, he or they so offending, shall be deemed guilty of felony, and on conviction thereof, shall be fined, not exceeding five hundred dollars, be whipped, not exceeding thirty-nine stripes, pay double damages to the party injured, and shall, moreover, be disqualified from voting at any election, or of giving evidence or serving as a juror in any court of justice, or of holding any office of honor, profit, or trust, in this state.

Hog stealing, &c. Punishment.

SEC. 34. *Be it further enacted,* That any person who shall steal any hog, shoat, or pig, belonging to any other person, or shall mark or alter the mark of any hog, shoat, or pig, belonging to another person, with an intention of stealing the same, shall, for every such offence, upon conviction thereof, be fined, not exceeding one hundred dollars, and whipped, not more than thirty-nine nor less than ten stripes.

What shall be deemed hog stealing.

SEC. 35. *Be it further enacted,* That if any person shall bring or cause to be brought, to his own house, or to any other house, or to any market, or on board of any vessel, any hog, shoat, or pig, with its ears recently cut off, he shall be deemed and adjudged to have stolen the same, and shall be punished as prescribed in the preceding section, unless he shall prove the said hog, shoat, or pig, to be his own property.

Receiving stolen goods. Punishment.

SEC. 36. *Be it further enacted,* That if any person or persons, shall receive or buy any goods, or chattels, or other thing, that shall be feloniously taken or stolen from any other person, knowing the same to have been so stolen, he or they, upon conviction thereof, shall be liable to the like punishments as in cases of larceny are before prescribed.

Harboring offenders. Punishment.

SEC. 37. *Be it further enacted*, That if any person shall barbor any thief, or any person guilty of any of the offences made punishable by this act, knowing him, her, or them, to be so, he or they, upon conviction thereof, shall be liable to the same punishment as the person harbored would be liable to.

Obtaining goods by false tokens & pretences.

SEC. 38. *Be it further enacted*, That if any person or persons, knowingly and designedly, by any false pretence or pretences, shall obtain from any other person or persons any chose in action, moneys, goods, merchandize, or effects, whatever, with intent to cheat or defraud such person or persons of the same, he or they, so offending, shall on conviction thereof, suffer the same punishment as in case of larceny.

Fraudulent conveyances

SEC. 39. *Be it further enacted*, That all and every the parties and others being privy to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or of any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract, or conveyance, had, made or contrived with the intent to deceive and defraud others, or to defeat, hinder or delay creditors of their just debts or demands; who at any time hereafter, shall wittingly and willingly put in use, avow, maintain, justify or defend the same, or any of them, as true, simple, and done, had, or made, *bona fide*, and upon good consideration; or shall alien or assign any of the lands, tenements, hereditaments, goods, chattels, or other things, before mentioned, to him, her or them conveyed as aforesaid, or any part thereof; he, she, or they, so offending, shall, on conviction, be fined in a sum not exceeding one thousand dollars; and shall, moreover, be liable to any and every person who may be injured or defrauded by any of the means aforesaid, in double damages, to be recovered by action of debt, or on the case, in any court having jurisdiction thereof.

Fine.

Making second deed for land without reciting first.

SEC. 40. *Be it further enacted*, That if any person shall, hereafter, by deed or writing, give, grant, bargain, sell or convey, or shall make, execute, or deliver any deed, covenant, contract, or writing, for the conveying, or assuring, or in any manner affecting, any lands, tenements, hereditaments, goods, or chattels, which he or she had, before that time, by deed or writing, sold, conveyed, mortgaged, or assured, or covenanted or bound himself to convey or assure to any other person, or whereby the same may be affected in law or equity, (such first deed or writing, being outstanding and in force) and shall not, in such second deed, covenant, contract, conveyance, assurance, or writing, recite or describe such former deed or writing, or the substance thereof; the person so executing or delivering such second deed, covenant, contract, conveyance, assurance, or writing, and every person who shall knowingly take or receive the same, shall, on conviction thereof, be fined, not exceeding five thousand dollars, and be imprisoned for a term not exceeding five years; and shall, moreover, be liable to pay to any and every person who may be injured or defrauded by any of the means aforesaid, double damages, to be recovered by action on the case, in any court of competent jurisdiction.

Punishment.

Forging and counterfeiting seal of state or other public seal.

SEC. 41. *Be it further enacted*, That every person who shall fraudulently forge, deface, corrupt or counterfeit the seal of this state, or the seal of any court or any public officer by law entitled to have and use a seal, and shall make use of the same, or shall counterfeit the signature of any public officer, or shall unlawfully and corruptly, with evil intent, affix any of the said true seals to any commission, deed, warrant, certificate or other writing, or who shall have in his possession or custody any such counterfeited seal, and shall wilfully conceal the same knowing it to be falsely made and counterfeited, and shall be thereof duly convicted, shall be fined not exceeding five thousand dollars, and imprisoned not exceeding five years.

Punishment.

Forgery of public securities.

SEC. 42. *Be it further enacted*, That if any person shall falsely make, forge or counterfeit, or cause to be falsely made, forged or counterfeited, any loan office certificate, auditor's warrant, bill of credit, or any warrant, order, certificate, or public security whatever, which are or shall be receivable in taxes or debts due the state, or any county within this state, or whereby any money may be drawn from the treasury of this state, or from the treasury of any county, town, city, borough, society or corporation within this state, or shall alter any such loan office certificate, auditor's warrant, bill of credit, or other certificate, warrant, order, or public security, so that the same shall appear to be of greater value, or shall pass or give in payment, or offer to pass or give in payment, any such forged, counterfeited or altered loan office certificate, auditor's warrant, bill of credit, or other certificate, order, warrant, or public security, knowing it to be such, with an intention to defraud this state, or any body politic or corporate, or any person or persons, every such person so offending shall be deemed guilty of felony, and upon conviction thereof, shall be fined in double the sum thus defrauded or attempted to defraud, and shall be imprisoned not exceeding five years, and whipped not exceeding thirty-nine stripes,

Punishment.

stand two hours in the pillory, and be rendered incapable of being a witness or juror, of voting at any election, or holding any office of honor, trust or profit in this state.

Counterfeiting coin.

SEC. 43. *Be it further enacted*, That if any person shall counterfeit, or cause or procure to be counterfeited, any of the species of the gold or silver coins now current or hereafter to be current in this state, or shall pass or give in payment, or offer to pass or give in payment the same, or to permit, cause, or procure the same to be altered or passed, with an intention to defraud any person, or body politic or corporate, knowing the same to be counterfeited, every person so offending, being thereof duly convicted, shall be imprisoned not exceeding ten years, be fined not exceeding one thousand dollars, be whipped not exceeding thirty-nine lashes, stand in the pillory two hours, and be rendered incapable of being a witness or juror, or of voting at any election, or holding any office of profit, honor or trust within this state.

Punishment.

Having counterfeit coin with intent to circulate.

SEC. 44. *Be it further enacted*, That if any person shall have in possession, or receive from any other person, any counterfeited gold or silver coins of the species now current or hereafter to be current in this state, with an intention to utter or pass the same, or to permit, cause or procure the same to be uttered or passed with an intention to defraud any person or persons, or body politic or corporate, knowing the same to be counterfeited, every person so offending, being thereof duly convicted, shall be imprisoned not exceeding three years, be fined not exceeding five hundred dollars, be whipped not exceeding thirty-nine stripes, stand in the pillory two hours, and be rendered incapable of holding any office of honor, trust or profit within this state, or of being a witness or juror, or of voting at any election.

Punishment.

Making or mending instruments for coining.

SEC. 45. *Be it further enacted*, That if any person or persons, other than those employed in the mint of the United States, shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending of any puncheon, counter puncheon, matrix, stamp, die, patterns, or moulds of steel, iron, lead, silver, or other metal or metals, mixture or mixtures whatsoever, or of spand or fine saunders earth or sand, or of any other materials whatsoever, in or upon which there shall be or be made or impressed, or which will make or impress the figure, stamp, resemblance or similitude of both or either of the sides or plate of any gold or silver coin current within the United States or this state, or shall knowingly make or mend, or begin or proceed to make or mend, or assist [in] the making or mending of any edgers or edging tool, instrument or engine, not of common use, but constructed for the use or purpose of making money, round the edges with letters, graining or other marks or figures resembling those on the edges of the gold or silver coin of the United States, or of any other gold or silver coin current in the United States or this state, or shall knowingly buy, sell or conceal such puncheons, counter puncheons, matrix, stamp, die, edger, cutting instrument, or other tool or instrument as before mentioned, or without lawful authority or sufficient excuse for that purpose shall knowingly have in his, her or their house or houses, custody or possession, any such puncheon, counter puncheon, matrix, stamp, die, edger, or other tool or instrument before mentioned, or shall color, gild or case over with gold or silver, or with any wash or materials producing the color of gold or silver, any piece of metal or coin resembling the gold or silver coin current in the United States or this state, or shall clip, with an intention to defraud, any of the coins made current in this state or the United States, or shall aid or procure any of the coins made current in the United States or this state to be clipped with intention to defraud, every such person or persons, their counsellors, procurers, aiders and abettors, shall, on conviction thereof, be punished as in the preceding section is directed in the case of persons having counterfeited coin in their possession with an intent to pass the same.

Buying, selling, concealing tools for coining.

Coloring or gilding.

Clipping coin.

Punishment.

Sec. 46. *Be it further enacted*, That whosoever shall forge, deface, corrupt or embezzle any charters, gifts, grants, bonds, bills, notes, conveyances, wills, testaments, or written contract of any nature or kind, or shall deface or falsify any enrolment, registry or record, or matter or instrument recorded, or shall counterfeit the seal or handwriting of another with intent to defraud, every person so offending, upon conviction thereof, shall be fined in double the sum he shall thereby have defrauded or attempted to defraud another, shall be whipped not exceeding thirty-nine lashes, stand in the pillory two hours, be imprisoned not exceeding five years, and be rendered thereafter incapable of being a witness or juror, or of voting at any election, or of holding any office of honor, profit or trust within this state.

Forgery of charters, deeds, bonds, bills, notes, or writings, &c.

Punishment.

Disqualification.

Sec. 47. *Be it further enacted*, That if any person or persons within this state shall falsely make, forge or counterfeit, or willingly aid or assist in falsely making, forging or counterfeiting any bill or note, in imitation of or purporting to be a bill or note issued by the president, directors and company of any bank of the United States, or any individual, state or territory co-partnership, body politic or

Forging and counterfeiting bills and notes.

Falsely altering bill or note.

Punishment

Disqualification.

corporate, or any order or check on any bank or corporation, or any cashier thereof, or shall falsely alter, or cause or procure to be altered, or willingly aid or assist in falsely altering any bill or note issued by the president, directors and company of any bank of the United States, or any individual, state or territory co-partnership, or body politic or corporate, or any order or check on any bank or corporation, or any cashier thereof, shall be deemed and adjudged guilty of felony, and on conviction thereof shall be fined not exceeding one thousand dollars, stand in the pillory two hours, be whipped not exceeding thirty-nine lashes, be imprisoned not exceeding five years, and rendered incapable of being a witness, juror, or voting at any election, or holding any office of honor, trust or profit within this state.

Passing forged and counterfeited notes, &c.

Passing falsely altered bills.

Forging note or bill, or assignment, or acceptance.

Or any receipt or order for money, &c.

Sec. 48. *Be it further enacted*, That if any person or persons within this state shall pass, utter or publish, or attempt to pass, utter or publish as true any falsely altered, forged and counterfeited bill or note in imitation of or purporting to be a bill, note or check issued by order of the president, directors and company of any bank of the United States, or any individual, state or territory co-partnership, or body politic or corporate, or any false, forged or counterfeited order or check upon any bank or corporation, or any cashier thereof, knowing the same to be falsely forged or counterfeited; or shall pass, utter or publish as true any falsely altered, forged or counterfeited bill or note, in imitation of or purporting to be a bill or note issued by or by order of the president, directors and company of any bank of the United States, or any individual, state or territory co-partnership, or body politic or corporate, or any falsely altered order or check on any bank or corporation, or any cashier thereof, knowing the same to be falsely altered, forged or counterfeited, with an intention to defraud the said bank or any of them, or any corporation, body politic, or any other person or persons; or shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting any bill of exchange or promissory note, or any endorsement or assignment of any bill of exchange or promissory note, or other security for the payment of money or delivery of goods, or any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for a note, bill or other security for the payment of money or delivery of property, or any receipt of any money paid or contract discharged, or any warrant or order for the payment of money or delivery of goods, with intent to defraud any bank, corporation, co-partnership or person whatsoever; or shall utter or publish as true any false, altered, forged or counterfeited bill of exchange, or promissory note, or endorsement or assignment of any bill of exchange or promissory note for the payment of money or delivery of goods, or acceptance of any bill of exchange or accountable receipt for any note, bill or other security for the payment of money or delivery of property, or any warrant or order for the payment of money or delivery of goods, with intent to defraud any bank, corporation, co-partnership, or person or persons whatever, *knowing the same* to be falsely altered, forged or counterfeited,—every such person so offending shall be deemed and adjudged guilty of felony, and upon conviction, shall be punished as is prescribed in the forty-seventh section of this act, in cases of forgery.

Passing forged note, bill, endorsement, acceptance, order, &c.

Punishment.

SEC. 49. *Be it further enacted*, That if any person in this state, shall make, or use, or cause or procure to be made or used, or knowingly aid or assist in the making or using of, any frame or mould, or part of any frame or mould, for the making of paper, with the name or firm, appearing visible in the substance or on *the surface of the* paper, of any person or persons, body politic or corporate, or other banking company, or partnership carrying on the business of bankers, without an authority in writing, for that purpose, from such person or persons, body politic or corporate, or other banking company, or partnership, or from some person or persons authorized to give such authority; or shall manufacture or make, or cause or procure to be manufactured or made, or shall aid or assist in the manufacturing or making of any paper, having the name or firm, appearing visible in substance or on the surface of any paper, of any person or persons, *body politic or corporate, or other* banking company, or co-partnership, whatsoever, carrying on the business of bankers; or any person or persons, without such authority as aforesaid, shall, by any means, arts, mysteries, or contrivance, cause or procure, or shall knowingly aid or assist in causing or procuring, the name or firm of any person or persons, body politic or corporate, or other banking company, or partnership carrying on the business of bankers, to appear visible in the substance or on the surface of the paper, whereon the same shall be written or printed; or if any person or persons, shall engrave, cut, etch, or scrape, in *mezzentinto, or other print*, or otherwise, or shall by any other means cause or procure to be engraved, cut, etched, or scraped, in mezzentinto, or otherwise, or shall knowingly aid or assist in making, engraving, etching, or scraping, in mezzentinto, or otherwise, or

Making, using, frames or moulds for making certain paper.

Manufacturing paper.

Engraving plates for counterfeiting.

by any other means or device, making in or upon any plate of copper, brass, pewter, glass, or any other metal, or mixture, whatever, or upon wood, or any other material, or any plate whatsoever, any promissory note, inland bill, bill of exchange, order, or check, for the payment of money, purporting to be a promissory note, inland bill, bill of exchange, or part of any promissory note, inland bill, bill of exchange, order, or check, for the payment of money, of any person or persons, body politic or corporate, banking company, or partnership, carrying on the business of bankers, without authority, in writing, for that purpose, from such person or persons, body politic or corporate, banking company, or partnership, or some person or persons duly authorized to give such authority; or shall use any other device for the making or printing of any such promissory note, inland bill, bill of exchange, order, or check, for the payment of money, or any part or parts of such promissory note, inland bill, bill of exchange, order, or check, for the payment of money, without such authority in writing, as aforesaid:—any person offending in any of the cases aforesaid, shall be deemed guilty of felony, and on conviction, shall be punished as is prescribed in this act.

Punishment.

Vending paper for counterfeiting.

Sec. 50. *Be it further enacted*, That if any person or persons shall vend, expose to sale, publish, or dispose of, or cause or procure to be vended, exposed to sale, published, or disposed of, any paper, having the name or firm, appearing visible in the substance or on the surface of the paper, of any person or persons, body politic or corporate, or any other company, or partnership, whatsoever, carrying on the business of bankers, without any authority, in writing, for that purpose, from such person or persons, body politic or corporate, or other banking company, or partnership, or from some person or persons authorized to give such authority; or shall have in his, her or their possession, any frame or mould, or part of a frame or mould, for making such paper, or any part thereof, without such authority as aforesaid, or any plate, engraven, etched, cut, or scarped, or by any other ways or means devised, for the making or printing of any promissory note, inland bill, bill of exchange, order, or check, for the payment of money, or any part or parts of such promissory note, inland bill, bill of exchange, order, or check, for the payment of money, without authority, in writing, for that purpose, from such person or persons, body politic or corporate, or other banking company, or partnership, or by some person or persons authorized to give such authority; and shall not be able to prove that such paper, mould, frame, plate, or device, came into his, her or their possession, without his, her

Having frame mould or plates, as aforesaid.

Punishment.

or their knowledge or consent; every person so offending, in any of the cases aforesaid, and being thereof lawfully convicted, shall be whipped, not exceeding thirty-nine lashes, shall stand two hours in the pillory, shall be fined, not exceeding one thousand dollars, and be rendered incapable of holding any office of honor, trust, or profit, within this state, or of being a witness, or juror, or of voting at any election.

Having counterfeit notes, &c with intent to pass them.

Sec. 51. *Be it further enacted*, That if any person shall have in his or her possession, or receive from any other person, any forged or counterfeit promissory note, or bill, for the payment of money, with intention to utter or pass the same, or to permit, cause or procure the same to be uttered, or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be forged or counterfeited; or shall have, or keep in his possession, any blank or unfinished note or bill, made in the form or similitude of any promissory note, or bill, for the payment of money, made to be issued by any incorporated bank, or banking company, in this state, or the United States, with intention to fill up and complete such blank and unfinished note or bill, or to permit, cause or procure the same to be filled up and completed, in order to utter and pass the same, or to permit, cause or procure the same to be uttered or passed, to defraud any person or persons, body politic or corporate; every person so offending, upon conviction, shall be punished in the same manner as is prescribed in the forty-fifth section of this act.

Blank notes.

Punishment.

Having in possession fictitious bills, orders, &c.

Sec. 52. *Be it further enacted*, That if any person within this state, shall make, pass, utter, or publish, with an intention to defraud any other person or body politic or corporate, or with like intention, shall attempt to pass, utter, or publish, or shall have in his or her possession, with like intent to pass, utter, or publish, any fictitious bill, note, or check, purporting to be the bill, note or check of some bank, corporation, or co-partnership, when in fact there shall be no such bank, corporation, or co-partnership, in existence, the said person knowing the said bill, note or check to be fictitious; every person so offending, shall be deemed guilty of the same offence, and liable to the same punishment, as if such note, bill or check, were forged, and the said bank, corporation, or co-partnership, did really exist.

Punishment.

Charter of banking company, may be proved by reputation.

Sec. 53. *Be it further enacted*, That on the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated bank or company, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company, by the charter or act of incorporation, but the same may be proved by general reputation.

Frame, mould, paper or tools for counterfeiting, may be seized.

SEC. 54. *Be it further enacted*, That if any frame or mould or any part of any frame or mould, for the making of paper, with the name or firm, appearing visible in the substance, or on the surface of such paper, of any person or persons, body politic or corporate, or other company or co-partnership carrying on the business of banking; or any plate, or engraving, whatsoever, used or designed, or fit to be used or designed, for the engraving, cutting, etching, or scraping, in mezzotinto, or otherwise howsoever, of the whole or any part of any promissory note, inland bill, bill of exchange, order, or check, for the payment of money, of any person, body politic or corporate, company, or partnership, carrying on the business of bankers, within the United States, or any of the territories thereof; or any tool, instrument, or engine, used or designed for coining or counterfeiting gold or silver coin, or any part thereof, shall be hid and concealed in any place, or found in any house, custody, or possession, of any person, not then employed by such person or persons, body politic or corporate, company, or co-partnership, carrying on the business of bankers, or in the mint of the United States, the same may be seized by any person or persons, whomsoever, with or without a warrant, and by such person or persons carried forthwith to some justice of the peace of the county, who shall safely keep and produce the same in evidence on the trial of any offender, against any of the foregoing provisions of this act, relating to forgery and counterfeiting, after which they shall forthwith be destroyed.

Burning or destroying charters, deeds, and securities.

SEC. 55. *Be it further enacted*, That if any person shall wilfully and maliciously tear, cut, burn, or in any way whatever destroy, any letters patent, charter, deed, indented or poles, lease, indentures of apprenticeship, writing sealed, will, testament, bond, annuity, bill, writing obligatory, release, bank bill or note, check, draft, bill of exchange, or promissory note, for the payment of money or property, on the number or principal sum of any accountable receipt for any note, bill or other security for the payment of money; or any warrant, order, or request for the payment of money, or the delivery of property; or any certificate, or other public security, of the United States, or of this state, or of any of the United States; or any acquittance, release, or discharge, of any debt, account, action, suit, demand, or other thing, real or personal; or any transfer or assignment of money, stock, goods, chattels, or other property, whatsoever; or any letter of attorney, or other power, to receive money, or to receive or transfer stock or annuities, or to let, lease, sell, dispose of, alien, or convey, any goods, chattels, lands, or tenements, or other estate, real or personal; or any book of accounts; or any agreement or contract in writing, whether sealed or not, respecting any estate real or personal,—with intent to injure, prejudice, damage, or defraud, any person or persons, body politic or corporate;—shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine, not exceeding five hundred dollars, or imprisoned, not exceeding three years, or both.

Punishment.

Perjury, and subornation of perjury, on trials for felony.

Sec. 56. *Be it further enacted*, That if any person shall wilfully and corruptly commit perjury on his or her oath or affirmation, or shall procure any person to commit wilful and corrupt perjury, on any trial for a felony, with an intent and design to charge the party on trial with such felony or discharge him therefrom, every such person, on conviction, shall suffer the same punishment as is due to the crime with which he has charged or attempted to charge, or from which he has discharged or attempted to discharge the other, and shall be incapable of being a witness or juror, or voting at any election, or holding any office of honor, trust or profit within this state: *Provided, however*, That the provisions of the foregoing section shall not extend to perjury by a female charging a rape, but for such perjury the said female shall be imprisoned during her natural life. And in all other cases of wilful and corrupt perjury, committed either on oath or affirmation, in any action, plea, suit, bill, answer, complaint, indictment, controversy, matter or cause, depending or which may depend in any of the courts of this state, or before any referees or arbitrators, or in any affidavit or deposition taken or to be taken pursuant to the laws of this state, every person committing such perjury, or procuring the same to be committed, shall, on conviction, be imprisoned not exceeding three years, and be fined not exceeding one thousand dollars, stand in the pillory one hour, be incapable of being a witness or juror, or of holding any office within this state, or voting at any election.

Punishment.

Disqualification.

Perjury by female on charge for rape.

Other cases of perjury, & subornation of perjury.

Punishment.

Disqualification.

Indictments for perjury, what necessary.

Sec. 57. *Be it further enacted*, That in every presentment or indictment to be prosecuted against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath or affirmation was taken (averring such court or person to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding, either in law or equity, other than as aforesaid, and without setting forth the commisson or authority of the court or person or persons before whom the perjury was committed, or the form of the oath or affirmation or the manner of administering the same.

Indictment for subornation of perjury.

SEC. 58. *Be it further enacted*, That in every presentment or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, and without setting forth the commission or authority of the court or person or persons before whom the perjury was committed or was agreed or promised to be committed, or the form of the oath or affirmation, or the manner of administering the same.

Bribery, of a judge or justice.

SEC. 59. *Be it further enacted*, That if any person shall directly or indirectly give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, or obligation or security for the payment or delivery of any money, present or reward, or any other thing to obtain or procure the opinion, judgment or decree, of any judge or justice acting within this state, or to corrupt, induce or influence such judge or justice to be more favorable to one side than to the other, in any suit, matter or cause depending or to be brought before him or them; or shall directly or indirectly give any sum or sums of money, or other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present, reward, or other thing to obtain, procure or influence the vote of any member of the general assembly, or to incline, induce or influence any such member to be more favorable to one side than to the other, on any question, matter or thing pending or to be brought before the general assembly, or either house thereof,—the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice or member of the general assembly who shall in any wise accept or receive the same, shall be deemed guilty of bribery, and, on conviction, shall be fined not exceeding one thousand dollars, and imprisoned not exceeding one year, and shall be thereafter incapable of holding any office of honor, trust or profit within this state, or of voting at any election.

Of member of general assembly.

Punishment.

Disqualification.

SEC. 60. *Be it further enacted*, That if any person shall

Bribery of other officers

directly or indirectly give any sum or sums of money, or any other bribe, present or reward, or any promise, contract or obligation or security for the payment of any money, present or reward, or any other thing, to any judge, justice, sheriff, coroner, clerk, constable, gaoler, attorney-general or circuit attorney, member of the general assembly, or other officer ministerial or judicial (but such fees as are allowed by law) with intent to induce or influence such officer to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor or otherwise than is required by law; or in consideration that such officer hath exercised any power in him vested, or performed any duty of him required, with partiality or favor or otherwise contrary to law,—the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security, with intent or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and, on conviction, shall be fined not exceeding one thousand dollars, be imprisoned not exceeding one year, and shall thereafter be incapable of holding any office of honor, trust or profit in this state, or voting at any election.

Punishment.

Disqualification.

Attempt to bribe.

Sec. 61. *Be it further enacted*, That if any person shall attempt to bribe any member of the general assembly, judge, justice, sheriff, coroner, clerk, constable, gaoler, attorney-general, circuit attorney, or other officer ministerial or judicial, in any of the cases mentioned in either of the preceding sections, he shall be fined in a sum not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Punishment.

Buying and selling offices

Sec. 62. *Be it further enacted*, That if any person or persons, at any time hereafter, shall bargain, sell or purchase any office or offices, or any part or parcel of any of them, or shall receive, have, take or give any money, fee, reward, or any profit directly or indirectly; or shall give, make, take or receive any promise, bond or any assurance to give, receive or take any money, fee or reward, or other profit, directly or indirectly, for any office or offices, or for the deputation of any office or offices, or any part of any of them, or for any nomination or appointment or any vote for the nomination or appointment to any office or offices, deputation or deputations to any office or offices, or any part of any of them, or to the intent that any person shall have, exercise or enjoy any office or offices, or any deputation or deputations of any office or offices, or any part of any of them, which office or offices, or any part or parcel thereof, shall be of honor, trust or profit, or shall in any wise touch or concern the administration or execution of justice, or which shall touch or concern any clerkship of any court of record, or any office ministerial or judicial,—then all and every such person or persons that shall so purchase, bargain or sell any of the said office or offices, deputation or deputations of any office or offices, or any part of any of them, or any nomination or appointment or any vote for the nomination or appointment to any office or offices, or any deputation or deputations of any office or offices, or any part of any of them; or shall give, take or receive any fee, reward or profit for any of the said offices, or any deputation or deputations of any of the said offices, or any part of any of them, or any appointment or nomination, or any vote for the appointment or nomination to any office or deputation as aforesaid, or for any the intents or purposes aforesaid; or shall give, make, take or receive any promise, agreement, covenant, bond or assurance for any money, reward or profit to be given or received for any office or offices as aforesaid, or any deputation or deputations aforesaid, or any part of any of them, or any nomination or appointment, or any vote for the nomination or appointment to any of the offices or deputations aforesaid, or any part of any of them, or for any of the intents or purposes aforesaid,—shall, on conviction thereof, be fined in a sum not exceeding five thousand dollars, be imprisoned not exceeding five years, and be for ever disqualified from holding any office of honor, profit or trust within this state, and of voting at any election: *Provided*, That this section shall not be construed to extend to the appointment of a deputy by any officer authorized by law to have a deputy, or to allowing such deputy a part of the fees of of office for his services, so that no money or reward be given or agreed to be given for such deputation.

Punishment.

Disqualification.

Sec. 63. *Be it further enacted*, That if any person shall acknowledge or procure to be acknowledged any fine, common recovery, deed, recognizance, bail or judgment, in the name of any other person not privy or consenting to the same, or if any person shall, before any court or person authorized to take bail, represent or personate any other person, whereby the person so represented or personated may be liable to the payment of any money for debt or damages to be recovered in the same suit or action wherein the person is represented or personated, as if he or she had really acknowledged and entered into the same bail, every such person so offending shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be fined not exceeding five thousand dollars, or imprisoned not exceeding seven years, or both, and shall also be

Personating others in acknowledging deeds, bail, &c.

Punishment.

whipped not exceeding thirty-nine stripes: *Provided*, That nothing herein contained shall extend to the acknowledgment of any judgment by any attorney duly admitted, for any person or persons against whom any such judgment shall be had or given.

Embracery, &c.

SEC. 64. *Be it further enacted*, That embracery, and all attempts to corrupt or influence a jury or any of them, or any way to incline such jury or any of them to be more favorable to the one side than to the other, by promises, persuasions, entreaties, threats, letters, money, entertainments or other sinister means, and all indirect, unfair and fraudulent practices, arts and contrivances to obtain a verdict, and all attempts to instruct a jury or juror beforehand, or at any place or time, or in any manner or way, except in open court at the trial of the cause, by the strength of the evidence, the arguments of the parties or their counsel, or the opinion or charge of the court,—shall be deemed misdemeanors, and punished by fine not exceeding three hundred dollars, and imprisonment not exceeding one year. And if any juror take money, goods, chattels, or other reward, of the one party or the other, or be so as aforesaid embraced, he shall, on conviction, be fined not exceeding six hundred dollars, and imprisoned not exceeding two years, and be for ever disqualified to serve as a juror.

Punishment.

Extortion.

SEC. 65. *Be it further enacted*, That if any judge, justice, sheriff, coroner, constable, gaoler, or other officer of this state ministerial or judicial, shall wilfully or corruptly receive or take any fee or reward to execute and do his duty in office, but such as is or shall be allowed by law, the person so offending, on conviction, shall be fined not exceeding five hundred dollars.

Punishment.

Misdemeanor in office.

SEC. 66. *Be it further enacted*, That if any justice of the peace, sheriff, coroner, or constable, shall on indictment, be convicted of any wilful misdemeanor in office, he shall be fined in any sum, not exceeding five hundred dollars, at the discretion of the court, and shall moreover be removed from office.

Fine.

Obstructing the execution of process.

SEC. 67. *Be it further enacted*, That if any person or persons shall knowingly and wilfully obstruct, resist, or oppose, any officer of this state, in serving or attempting to serve or execute any mesne, or final process, or warrant, or any rule or order of any of the courts of this state, or any other legal or judicial writ or process whatsoever; or shall assault, beat, or wound, any officer, or other person duly authorized, in serving or executing any writ, rule, order, process, or warrant, as aforesaid; or shall resist or assault any officer, in the discharge of any other of his official duties,—every person so knowingly and wilfully

Punishment. offending in the premises, shall, on conviction thereof, be imprisoned, not exceeding one year, and fined, not exceeding three hundred dollars.

Rescue. In capital cases after conviction. Punishment. Other cases. Punishment. SEC. 68. *Be it further enacted,* That if any person or persons shall, by force, set at liberty or rescue any person who shall be found guilty of murder or other capital crime, or rescue any person convicted of any such crime, going to execution or during execution; every person so offending, and being thereof convicted, shall suffer death. And if any person or persons shall, by force, set at liberty or rescue any person, who before conviction, stands committed for any of the capital offences aforesaid, or any person committed for or convicted of any other offence against this state; every person so offending, shall, on conviction, be fined, not exceeding one thousand dollars, and imprisoned, not exceeding three years.

Aiding escape of prisoner. Punishment. Furnishing means of escape. Punishment. SEC. 69. *Be it further enacted,* That if any person shall, by any ways or means whatsoever, be aiding or assisting to any prisoners, legally confined in any gaol or other prison, upon any criminal charge or for any criminal matter, to make or attempt to make his escape, from such gaol or prison; although no escape be actually made, every person so offending, and being thereof convicted, shall be deemed guilty of a misdemeanor, and shall be punished by fine, not exceeding five hundred dollars, or imprisonment, not exceeding two years, or both. And if any person shall convey, or cause to be conveyed, into any gaol or prison, any mask, vizor, or other disguise, or any instrument or arms, proper to facilitate the escape of such prisoner as aforesaid, and the same shall deliver or cause to be delivered to any such prisoner, or to any other person there, for the use of such prisoner, without the consent or privity of the keeper of such gaol or prison; every such person, although no escape, or attempt to escape, be actually made, shall be deemed to have delivered such mark, vizor, or other disguise, instrument, or arms, with intent to aid or assist such prisoner to escape, and being thereof convicted shall be deemed and adjudged to be guilty of a misdemeanor, and shall be fined, not exceeding five hundred dollars, or imprisonment, not exceeding two years, or both.

Voluntary escape in capital cases. Punishment. SEC. 70. *Be it further enacted,* That if any sheriff, coroner, gaoler, keeper of a prison, constable, or other officer or person whatsoever, having any offender, guilty of treason, murder, or other crime, punishable with death, in his legal custody, for any such crime, shall voluntarily permit or suffer such offender to escape and go at large; then every such person, so offending, on being thereof convicted, Negligent escapes.

shall suffer death. And all voluntary escapes, in cases not punishable with death, and all negligent escapes, of whatever kind, in criminal cases, shall be deemed misdemeanors, and punished by removal from office, and by fine, not exceeding one thousand dollars, or imprisonment, not exceeding three years, or both.

Compounding offences.

Punishment.

SEC. 71. *Be it further enacted*, That if any person or persons agree or compound to take satisfaction for any criminal offence, such person or persons, on conviction, shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief, provided he prosecute such thief.

Misprison of felony.

Punishment.

SEC. 72. *Be it further enacted*, That if any person shall receive, harbor or conceal, any felon, knowing him to be such, or having knowledge of the actual commission of any felony, shall conceal, and not as soon as may be, disclose and make known the same, to some one of the judges or justices of the peace, within this state, such person, on conviction thereof, shall be adjudged guilty of misprison of felony, and shall be imprisoned, not exceeding three years, and fined, not exceeding five hundred dolllars: *Provided, however*, That the provisions of this section shall not be extended to the husband or wife of any such felon, his or her relations, in the ascending or descending line, either by affinity or consanguinity, his or her brothers or sisters, or his or her domestic servants.

Conspiracy.

Punishment.

SEC. 73. *Be it further enacted*, That all such as combine, write, or confederate, conspire or bind themselves by oath, covenant, or agreement, or other alliance, that they shall and will mutually aid, support and help one another, falsely and maliciously to indict, or cause or procure to be indicted, any person or persons; shall be deemed guilty of conspiracy, and on conviction, shall be fined, not exceeding one thousand dollars, or imprisoned, not exceeding two years, or both.

Usurpation of office.

Punishment.

SEC. 74. *Be it further enacted*, That if any person shall take upon himself to exercise or officiate in any office or place of authority, in this state, without being lawfully authorized thereto, he shall, upon conviction, be fined in a sum not exceeding one hundred dollars.

Barratry.

Fine.

SEC. 75. *Be it further enacted*, That if any person shall be a common barrater, and be thereof duly convicted, he shall pay a fine not exceeding one hundred dollars, and become bound with surety for his good behavior, for a term not less than one year.

Bigamy.

SEC. 76. *Be it further enacted*, That if any person or persons, within this state, being married, or who shall hereaf-

Punishment.
Disqualification
Evidence.
Trial where to be had.
Proviso.

ter marry, do at any time marry any person or persons, the former husband or wife being alive, upon conviction thereof, he or they shall be whipped, not exceeding thirty-nine stripes, be fined in not less than one hundred dollars, nor more than five hundred dollars, and imprisoned, not less than six nor more than twelve months, and thereafter be rendered infamous, be incapable of giving testimony, or holding any office, civil or military, within this state. And where the second marriage shall have taken place without this state, cohabitation after such marriage within this state, shall be deemed a continuation of the offence of bigamy, so that the same may be punished within this state, in the same manner as though the same had taken place here; and the trial may be in the county where the second marriage took place, (if within this state) or in the county where the cohabitation shall have taken place within this state: *Provided*, That nothing herein contained, shall extend to any person or persons, whose husband or wife shall have been continually remaining beyond the seas for the space of seven years together, prior to the said second marriage, or whose husband or wife shall absent himself or herself from the other, for the space of seven years together, prior to such marriage, in any part of the United States, or elsewhere, he or she not knowing such husband or wife to be living, within that time: *Provided, also*, That nothing herein contained shall extend to any person or persons, that are, or shall be at the time of such marriage, divorced, by lawful authority, from the bonds of such first marriage; or to any person or persons, where the former marriage hath been, by lawful authority, declared to be void and of no effect; nor to any person or persons, for or by reason of any marriage had or made, or hereafter to be had or made, under the age of consent.

Adultry and fornication.
Punishment.

SEC. 77. *Be it further enacted*, That every person who shall live in a state of open and notorious adultery or fornication, or who shall be guilty of open lewdness, or of any notorious act of public indecency, grossly scandalous, and tending to debauch the morals and manners of the people; shall, on conviction, be fined, not exceeding two hundred dollars, and be imprisoned, not exceeding one year, or both, at the discretion of the court.

Taking up dead bodies for dissection.

SEC. 78. *Be it further enacted*, That if any person or persons, shall open the grave of any deceased person, or the tomb where the body or bodies of any deceased person or persons have been deposited, and shall remove the body or bodies or remains of any deceased person or persons, from their grave, graves, or place of sepulture, for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, and one justice of the peace of the township where said deceased person was interred, or shall in any way aid, assist, or procure the same to be done, or shall aid or assist in any surgical or anatomical experiments therewith, or dissections thereof, knowing said body or bodies to have been so taken or removed from the place or places of their sepultures; every such person so offending, being thereof duly convicted, shall be fined, not less than one hundred dollars nor more than five hundred dollars, and shall be imprisoned, not less than three nor more than twelve months, at the discretion of the court.

Fine.

Riot.
1st instance.

Sec. 79. *Be it further enacted*, That if three or more persons shall assemble together with an intent to do an unlawful act, with force or violence, against the person or property of another, or to do any other unlawful act against the peace and to the terror of the people; or being lawfully assembled, shall agree with each other to do any unlawful act as aforesaid, and shall make any movement or preparation therefor,—the persons so offending shall, upon conviction thereof, pay a fine each of twenty dollars, and find security for their good behaviour respectively for the space of six months.

Fine.

Riot; duty of peace officers.

Sec. 80. *Be it further enacted*, That whenever three or more persons shall be assembled as aforesaid, and proceeding to commit any of the offences as aforesaid, it shall be the duty of all judges and justices of the peace, sheriffs and all ministerial officers, immediately upon actual view, or as soon as may be upon information, to make proclamation in the hearing of such offenders, if silence can be obtained, commanding them in the name of the state to disperse and depart to their several homes or lawful employments; and if upon such proclamation, or when silence cannot be obtained, such persons so assembled shall not disperse and depart as aforesaid, it shall then be the duty of the said judge or justice of the peace, sheriff and other ministerial officers respectively, to call upon persons near and of abilities, and throughout the county if necessary, to be aiding and assisting in dispersing and taking into custody all persons assembled as aforesaid. And all military officers and others called upon as aforesaid, are hereby directed to render assistance and full obedience in this behalf, upon the penalty of fifty dollars each for every neglect or refusal herein, and commitment in case of non-payment. If any of the persons so unlawfully assembled shall be killed, maimed, or otherwise injured, in consequence of resisting the judges or others in dispersing and apprehending, or in attempting

Military officers to assist.

Homicide committed in dispersing unlawful assembly.

Riot. 2d instance

Punishment.

to disperse or apprehend them,—the said judges, justices of the peace, sheriffs, and other ministerial officers, and others acting by their authority or by the authority of any of them, shall be holden guiltless. And if any person or persons shall forcibly obstruct any of the authorities aforesaid, or if any three or more persons shall continue together after proclamation as aforesaid made, or attempted to be made and prevented by such rioters, or in case of no proclamation any three or more persons being assembled as aforesaid shall commit any unlawful act as aforesaid, every offender, upon conviction thereof, shall be fined in a sum not exceeding three hundred dollars, and give security for good behaviour for a time not exceeding one year, at the discretion of the court; and upon a second conviction, each and every offender shall be fined as aforesaid, and find sureties for good behaviour, and to keep the peace for a time not exceeding ten years.

Disturbers of the peace.

Punishment.

Sec. 81. *Be it further enacted*, That if any person or persons shall, at unusual hours, in the night season, maliciously and wilfully disturb the peace of any neighborhood or family, by loud and unusual noises, or by tumultuous and offensive carriage, threatening, traducing, quarreling, challenging or fighting, and, on being thereof duly convicted, shall be punished by fine not exceeding one hundred dollars, or by imprisonment not exceeding six months, or both, at the discretion of the court.

Threatening letters.

Punishment

Sec. 82. *Be it further enacted*, That if any person shall knowingly send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, threatening to accuse any person of a crime of an indictable nature by the laws of this state, with an intent to extort from him or her money, wares, merchandize, goods or chattels, or other valuable thing, or demanding money, goods or chattels, or other valuable thing, or threatening to maim, wound, kill or murder any person, or to burn his or her house, out-house, barn or other building, or stack or stacks of corn, grain or hay, though no money, goods or chattels, or other valuable thing, be demanded by such letter or writing,—every such person so offending shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding three hundred dollars, or imprisonment not exceeding one year, or both, at the discretion of the court.

Malicious mischief.

Sec. 83. *Be it further enacted*, That if any person shall wilfully, unlawfully and maliciously cut down, break down, level, demolish, or otherwise destroy or damage any bridge, embankment or mill-dam; or break or destroy the windows or doors of any dwelling house or other house or building;

or shall set fire to, or burn or destroy, or procure or cause to be burnt or destroyed any barrack, cock, crib, rick or stack of hay, corn, wheat, rye, oats, barley or grain of any kind; or shall cut down, or girdle or destroy any fruit trees or shade trees; or shall pull down, burn or destroy any gates, posts, railing, fences; or shall burn or destroy any piles of wood, boards, plank or other lumber; or shall overturn any cart, wagon or other carriage, or shall run them into ponds, sloughs, or holes, or other places; or shall cut loose or set adrift any canoe, skiff, boat, or other vessel, for mischief; or shall unlawfully, wantonly, wilfully and maliciously, kill, wound or destroy any horse, mare or gelding, or any bull, ox, steer, bullock, cow, heifer or calf, or any sheep or lambs, being the property of another,—every person so offending shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year, or both.

Injury to animals.

Punishment.

SEC. 84. *Be it further enacted*, That if any slave shall resist his or her master, mistress, overseer or employer, or refuse to obey his or her lawful commands, it shall be lawful for such master, mistress, overseer or employer to commit such slave to the common gaol of the county, there to remain at the pleasure of the master, mistress, overseer or employer; and the sheriff or gaoler shall receive such slave, and keep him or her in confinement, at the expense of the person committing him or her. And if any slave shall, contrary to his bounden duty, presume to strike or assault his or her master, mistress, overseer or employer, such slave, on conviction thereof before a justice of the peace, shall be whipped not exceeding thirty-nine stripes.

Disobedience of slaves.

Slave assaulting master, &c.

Punishment.

SEC. 85. *Be it further enacted*, That if any person shall, by bribery, menace, or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this state in giving his vote, or shall deter him from giving the same at any election in this state,—every person so offending shall, on conviction, be fined in a sum not exceeding twelve hundred and fifty dollars nor less than one hundred dollars, in addition to the disabilities imposed by the thirteenth section of the third article of the constitution of this state.

Attempt to bribe, or influence voters.

Punishment and disability.

SEC. 86. *Be it further enacted*, That if any elector within this state, shall receive any bribe for giving his vote at any election, he shall be fined not exceeding five hundred dollars, and thereafter be disqualified from voting at any election within this state, for the space of ten years from the time of his conviction.

Receiving bribe.

Punishment.

SEC. 87. *Be it further enacted*, That if any person or

Setting up or keeping gaming tables.

persons shall set up or keep, any table or tables, commonly called A. B. C. Faro Bank, E. O. Roulette, Equality, or any other kind of gaming table or tables, at which any game of chance shall be played for money or property, or shall keep any bank as aforesaid, and induce or permit any person or persons to bet against said bank, any person or persons, so offending, being thereof convicted, shall be fined in any sum not exceeding five hundred dollars, nor less than fifty dollars, stand in the pillory one hour, receive not less than ten, nor more than thirty-nine stripes, and be imprisoned not exceeding one year, at the discretion of the court before whom the conviction is had.

Punishment.

Betting on games.

SEC. 88. *Be it further enacted*, That if any person or persons shall, at any time, win or loose, or bet in money, goods, or chattels, on any of the games played at the tables aforesaid, or at any other gaming table, or any game of cards, or at any other gambling device whatever, every person, so offending, shall forfeit and pay the sum of five dollars, and the value of the money, goods, or chattels, so won, lost, or bet as aforesaid.

Fine.

Permitting gaming tables to be set up and kept.

SEC. 89. *Be it further enacted*, That if any person or persons shall suffer any of the gaming tables above enumerated, or other gaming table, or gambling device, at which any game of chance is played, or money or property won or lost, to be set up or used, in his or her house, shed, out house, barn, stable, boothe, or other place of which he or she hath, at that time, the possession or use, he, she, or they, so offending, shall, for every such offence, forfeit a sum not exceeding five hundred dollars, nor less than fifty dollars, at the discretion of the court before whom the conviction is had. And it shall be the duty of any justice of the peace of the county wherein any such table may be found, to issue his warrant to the sheriff or constable to have such table destroyed.

Penalty.

Tables to be destroyed.

Sabbath breaking by labour.

SEC. 90. *Be it further enacted*, That if any person on the Lord's days, Sabbath or Sunday, shall be found laboring, or shall compel his or her apprentice, servant or slave, or the apprentice, servant or slave of any other person, to labor or perform other services, unless it be the ordinary household offices of daily necessity and charity, or other works of necessity or charity, he, she, or they, so offending, shall, on conviction, forfeit and pay the sum of one dollar for every offence, deeming every apprentice, servant or slave so compelled, as constituting a distinct offence: *Provided*, That no person who is a member of any religious society, who observes as a Sabbath any other day than the christian Sabbath, shall be liable to the penalty herein incurred for a breach of the Sabbath,

Fine.

so that they observe one day in seven, agreeably to the regulations aforesaid, saving to ferrymen the right of crossing passengers.

Hunting, sporting, &c. on the Sabbath.

SEC. 91. *Be it further enacted*, That if any white person shall be guilty of shooting, horse racing, cock fighting, hunting, or of frequenting tipling houses or groceries, on the first day of the week, called Sunday or Sabbath, he shall, on conviction, be fined not less than one, nor more than ten dollars: *Provided, however*, That this section shall not extend to any person or persons who may hunt, shoot, or kill any wolf, panther, wild cat, or other animal or fowl, which may in any way depredate upon, or destroy any tame stock, growth or grain.

Fine.

Proviso.

Selling merchandize, &c. on the Sabbath.

SEC. 92. *Be it further enacted*, Tha if any person shall expose to sale any wares, merchandize, goods, or chattels, or shall keep open any ale or porter house, or grocery, or shall retail any ale, or porter, or any strong or spirituous liquors, after ten o'clock in the morning, on the first day of the week, called Sunday, every person, so offending, shall, on conviction, be fined not less than one, nor more than ten dollars: *Provided*, That this section shall not extend to the sale of articles of provision, nor to the sale of any articles of immediate necessity.

Fine.

Proviso.

Disturbing religious congregations.

SEC. 93. *Be it further enacted*, That if any person or persons shall wilfully, maliciously, or contemptuously, and of purpose to disquiet or disturb any congregation or assembly of people, met for religious worship, either by making a noise, or by rude and indecent behavior, or profane discourse, whether within their place of worship or out of it, so near the same as to disturb the order and solemnity of the meeting, or shall make use of threatening language, or shall commit violence to or upon any person or persons then and there assembled for the purpose aforesaid; he, she, or they, so offending, shall, on conviction, be fined, not exceeding one hundred dollars nor less than one dollar, at the discretion of the court before whom the conviction is had.

Penalty.

Accessaries.

SEC. 94. *Be it further enacted*, That every person who shall aid, assist, abet, hire, counsel or command any person or persons to commit any crime or offence, indictable by the laws of this state, being thereof duly convicted, shall suffer the same punishment as that to which the principal offender is subject.

Conviction 2d time for similar offence.

SEC. 95. *Be it further enacted*, That if any person, having been convicted of any crime or misdemeanor, under this act, the punishment whereof is imprisonment or whipping, shall again be convicted of the like offence, he shall, on such second conviction, be liable to double the punishment

Double punishment.

Third conviction, treble. which is herein prescribed for the first offence; and on a third conviction, the punishment may be treble.

Insurrection of slaves. Sec. 96. *Be it further enacted*, That if any negro or other slave, shall at any time rebel or make an insurrection, or shall enter into any agreement or conspiracy to rebel or make insurrection, or shall plot or conspire the murder of any person or persons, in furtherance of such conspiracy, and shall by any overt act, attempt to execute any such agreement, plot or conspiracy; every such slave, so offending in any of the particulars aforesaid, shall suffer death. Punishment.

Conspiracy to rebel, &c. Sec. 97. *Be it further enacted*, That if any slave shall enter into any agreement, plot, or conspiracy, as aforesaid, to commit any of the crimes or acts mentioned in the preceding section, although he may not attempt to carry into execution any such agreement, plot or conspiracy, he shall nevertheless, on conviction, be punished by stripes, at the discretion of the court, not exceeding thirty-nine: *Provided, however*, That if it shall appear to the court and jury, that the said agreement, plot, or conspiracy, had been voluntarily abandoned by such slave, before any complaint made against him for the same, from feelings of compunction and genuine repentance of the crime meditated, they may acquit the offender for the first offence; but if after such acquittal, or after conviction under this section, he shall be guilty of a second offence, he shall, on conviction, suffer death.

Slaves administering medicine. Sec. 98. *Be it further enacted*, That if any slave shall prepare, exhibit, or administer, any medicine whatever, he or she, so offending, shall be adjudged guilty of felony, and shall suffer death: *Provided, however*, That if it shall appear to the court before whom such slave shall be tried, that the medicine was not prepared, exhibited, or administered, with an ill intent, and did not occasion the death of any person, such slave may be acquitted of the felony and convicted of a misdemeanor, and be punished by stripes, at the discretion of the court: *Provided, also*, That nothing herein contained shall be construed to extend to any slave administering any medicine, by his or her master's or mistress' order, in his or her family, or the family of a mother, with the mutual consent of the owner of such slave, and the master or mistress of such family. Proviso.

Punishment of slaves. Sec. 99. *Be it further enacted*, That the punishments prescribed in the foregoing act, shall not apply to offences committed by slaves, unless they are expressly named and included in the provisions of the act; but in the case of slaves, the punishment shall be, for murder or arson, death; for a rape upon any person, or attempt to commit a rape upon a white woman, castration; for all other offences Murder and arson. Rape.

they shall be punished, at the discretion of the court before whom the conviction shall be had, but no part of the punishment shall be fine or imprisonment, but in lieu thereof, the court may punish by stripes, at their discretion.

Other offences.

Master of slaves to make restitution, &c.

SEC. 100. *Be it further enacted*, That if any slave or slaves, shall be convicted of any offence, a part of the punishment for which shall be restitution to the party injured, the master or masters of such slave or slaves, shall be holden to make restitution in single damages only; and in case of theft, if the thing stolen be not returned, the master or masters shall make restitution to the full amount of the thing stolen; and if any master shall refuse to make restitution as aforesaid, or shall refuse to pay the costs of prosecution, in any case where his slave may be convicted for any offence, it shall be the duty of the court before whom the trial is had, to order the sheriff of the county to sell such slave, within sixty days thereafter, at public auction, on a credit of twelve months, unless the said master, in the mean time, shall redeem said slave, by paying the amount for which he shall be so ordered for sale; the said sheriff, in the mean time, shall keep said slave in custody; he shall give twenty days notice at least, of the time and place of sale, and shall take bond from the purchaser or purchasers, with sufficient surety, for the payment of the purchase money and interest; which bond shall be recoverable in a summary way, by motion before any court of record proper to try the same, the said party to be motioned against, having fifteen days previous notice personally served on him, or left at his last and usual place of residence; and the said sheriff, after paying the money for which said slave shall be ordered to be sold, and all costs for his keeping and the sale, shall pay the overplus, if any, to the owner of such slave.

Master refusing, slaves to be sold.

This act extends to females.

SEC. 101. *Be it further enacted*, That this act shall extend to females, committing any of the offences made punishable by this act, although they be not expressly named; but when any female, not a slave, shall be convicted of any offence, the punishment for which, or any part thereof shall be whipping, or standing in the pillory, she shall, in lieu thereof, be imprisoned, at the discretion of the court.

But white females not punishable by stripes.

Repeal.

SEC. 102. *Be it further enacted*, That all acts and parts of acts, providing for the punishment of any crimes or offences made punishable by this act, shall be and the same are hereby repealed: *Provided*, That all indentures, process, and proceeding, which shall be pending at the taking effect of this act, under or by virtue of any law hereby repealed, shall be proceeded on to judgment and execution, in the same manner and with the like effect, as if this act

Saving.

had not passed; and all offences which shall have been committed or may be committed, before the taking effect of this act, and which are made punishable by any of the laws hereby repealed, shall be proceeded on and punished in the same manner as if this act had not passed. This act shall take effect and be in force, from and after the fourth day of July next.

[*Approved*, *February* 12, 1825.]

CHAPTER II.

PROCEEDINGS IN CRIMINAL CASES.

4 July, 1825.

AN ACT to regulate proceedings in Criminal Cases.

Benefit of clergy.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That the benefit of clergy in criminal cases be for ever abolished.

Appeals of felony.

SEC. 2. *Be it further enacted*, That all appeals of felony shall be and are hereby abolished.

Civil remedy not merged in the felony.

SEC. 3. *Be it further enacted*, That in all cases of felony heretofore committed, or which may hereafter be committed, it shall and may be lawful for any person injured or aggrieved by such felony to have and maintain his or her action against the person or persons guilty of the felony, in like manner as if the offence committed had not been felonious; and in no case whatever shall the right of action of the party injured be deemed taken, or adjudged to be merged in the felony, or in any manner affected thereby.

Felons to be pursued and apprehended.

SEC. 4. *Be it further enacted*, That when any felony shall be committed, public notice thereof shall be immediately given in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every such felon by sheriffs, coroners, constables, marshals, and all other persons who shall be by them commanded or summoned for that purpose; and every competent person who will not do so, and be thereof convicted, shall be punished by fine, at the discretion of the court having cognizance of the offence. And every such officer who shall conceal or procure to be concealed any felony, or who shall not do his duty in the premises, shall be punished by fine and imprisonment, at the like discretion of the court having cognizance of the offence.

Punishment for failure.

Judges, justices, to issue process and take recognizances.

SEC. 5. *Be it further enacted*, That the judges of the supreme court throughout the state, the judges of the circuit court in their respective circuits, and justices of the peace in their respective counties, shall have full power and authority to issue process against and to take all manner of recognizances of persons charged with any offence against the laws of this state, and to bind to the peace and good behaviour; which said recognizance shall be made to the state of Missouri, and certified to the circuit court of the proper county, without concealment, detaining or embezzlement.

Surety of peace.

Recognizances to be returned.

Sec. 6. *Be it further enacted*, That the circuit court in each county shall have power to issue process for the apprehension of all persons indicted in said court, and subpœnas and other process for witnesses, into any other county within this state.

Process upon indictment.

Sec. 7. *Be it further enacted*, That it shall not be deemed necessary to the validity of any warrant for the apprehension of any person charged with any offence against the laws of this state, or any warrant of commitment in any case, that it should be under the seal of the judge or justice of the peace issuing the same,—but every such warrant, under the hand of the judge or justice, shall be as valid and effectual in law as if he had affixed his seal thereto.

Warrants good without seal.

Sec. 8. *Be it further enacted*, That if any person charged with any offence against the laws of this state, against whom a warrant shall be issued by a judge or justice of the peace of one county, shall escape into another county, he may be apprehended by having the warrant endorsed by any judge or justice of the county into which he shall so escape, and may be bailed in that county if he be bailable; if not, or he cannot there find bail, he shall, by the warrant of the judge or justice, be sent back into the county where the warrant was first issued, and there committed or bailed: *Provided*, That in any case arising under the provisions of this section, the person or persons apprehended shall be either held to bail or committed to gaol without examination, by any judge or justice acting out of the county where the offence was committed.

Offenders may be pursued from one county to another, warrant being endorsed.

Sec. 9. *Be it further enacted*, That where any felony shall have been committed in one county, and the felon shall have fled or escaped into any other county within this state, it shall be the duty of any judge or justice of the peace of the last mentioned county to whom complaint shall be made of the said felony, upon the oath of any credible witness or witnesses, forthwith to issue his warrant for the apprehension of such felon; and if, upon his being arrested and brought before such judge or justice, it shall appear upon examination that there is good cause for his arrest and detainer, the said judge or justice may take bail of the said felon if he be bailable; if not, or if he cannot there find bail, he shall, by the warrant of the said

Felons may be apprehended in any county, and sent to the county in which the offence was committed.

judge or justice, be sent back to the county where the said offence was committed.

Power and duty of officers conveying prisoner from one county to another.

Return to be made by justice.

Sec. 10. *Be it further enacted*, That any person to whom any warrant may be directed for carrying back any offender to the county in which the offence was committed, according to the provisions of either of the two preceding sections, may execute the same, and may take the prisoner into any other county which may be necessary on his way back to the county from which the said prisoner fled, and may deposit the said prisoner in any gaol on his route for safe custody, for one night or more as occasion may require; and upon his arrival in the county to which the said prisoner is sent, he shall deliver him to the custody of the sheriff or gaoler, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or gaoler to receive him, and detain him in prison until he shall get bail if the offence be bailable; or if not, until he shall be discharged by due course of law. And the said judge or justice shall forward the examination of the said prisoner, and the evidence produced against him, if any, properly reduced to writing, and the recognizance of witnesses, duly certified, to the said sheriff or gaoler, in the same manner as is directed in the next succeeding section.

Judges and justices to take examination of prisoner and witnesses in writing

Examination to be certified and returned.

Sec. 11. *Be it further enacted*, That it shall be the duty of every judge or justice of the peace, before whom any person shall be brought charged with any criminal offence, or for suspicion thereof, before he shall commit such prisoner to gaol or admit him to bail, to take the examination of such prisoner, and the information on oath of those who bring him, and all witnesses attending, of the facts and circumstances thereof,—and the same, or so much thereof as shall be material to prove the offence, he shall forthwith reduce to writing, and certify the same; and in case of committing such prisoner to gaol, such judge or justice shall forward the said examination and and information so taken, along with the warrant of commitment, to the sheriff or keeper of the gaol of the proper county; and it shall be the duty of such sheriff or keeper of the gaol to keep and preserve the examination and information so delivered as aforesaid, whole, safe and undefaced, and return the same, together with a copy of the warrant of commitment, certified by him, to the proper court having cognizance of the offence with which the prisoner is charged, on the first day of the first term to be holden thereafter; but if such prisoner shall be admitted to bail, then such judge or justice shall return the examination and information so taken, together with the recognizance of the prisoner and of the witnesses, certified as aforesaid, to the proper court having cognizance of the offence, on the first day of the next succeeding term.

Recognizance to be taken of prosecutor & witnesses.

SEC. 12. *Be it further enacted*, That it shall be duty of the judge or justice of the peace, who shall commit any offender to gaol as aforesaid or admit him to bail, to bind the prosecutor and all such, by recognizance, as do declare any thing material to prove the offence with which such prisoner is charged, to appear before the court having cognizance of the offence, at the place of holding the same, on the first day of the next [term] thereof, to give evidence touching the offence of which the prisoner is charged, and not to depart the court without leave, which said recognizance shall be signed by the party entering into the same, shall be certified by the judge or justice taking the same, and returned to the proper court on the first day of the next succeeding term thereof; and if any person as aforesaid shall refuse to enter into recognizance as aforesaid upon being required so to do, it shall and may be lawful for such judge or justice to commit him or her to the common gaol of the county, there to remain until he or she shall enter into such recognizance, or be otherwise discharged by due course of law.

Recognizances to be certified and returned.

Prisoner committed for want of bail, may be bailed by a judge or two justices.

SEC. 13. *Be it further enacted*, That where any person shall be committed to gaol, for the want of bail, or for not entering into a recognizance, any judge, or any two justices of the peace, may take such bail or recognizance, in vacation, and may discharge such prisoner from his or her imprisonment; and it shall be the duty of the judge or justice of the peace committing such person to gaol, to endorse on the warrant of commitment, in what sum the said bail or recognizance ought to be taken.

Amount of bail to be endorsed on commitment.

In prosecution for assault & battery, prosecutor liable for costs.

SEC. 14. *Be it further enacted*, That in all cases where any person shall be brought before any judge or justice of the peace, charged with an assault, battery, or other trespass, and such prisoner shall be discharged by him, it shall be the duty of the judge or justice, to enter judgment against the prosecutor or person at whose instance such person was brought before him, for the costs, and issue execution therefor accordingly; and if such prisoner shall be committed to gaol, or held to bail for further trial, it shall be the duty of the judge or justice, to make out a certificate, stating the name, occupation, and place of abode of the prosecutor or person instituting such prosecution, and return the same, with the recognizance of such person, to the proper court, as required in case of recognizance by him taken; and where a prosecutor shall be returned, as aforesaid, it shall be the duty of the attorney prosecuting in behalf of the state, to endorse the name of such person

Name of prosecutor to be endorsed on indictment.

on the indictment, which endorsement shall be as effectual, and the same proceedings shall be had thereon, as if such prosecutor had endorsed his own name on such indictment.

Indictment for tresspass prosecutor to be endorsed

Exception.

If returned "not a true bill," prosecutor to pay costs.

Defendant acquitted, jury to determine as to costs.

Execution.

Prosecutor competent witness.

SEC. 15. *Be it further enacted*, That no bill of indictment, for assault and battery, or any other trespass, shall be preferred to any grand jury, unless a prosecutor is endorsed thereon, except the same shall be preferred upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer, in the necessary discharge of his duty, in which case, it shall be stated, at the end of the indictment, how the same is preferred, and no prosecutor shall be required; but in cases where a prosecutor is endorsed, if the grand jury do in any such case return the bill "not a true bill," the prosecutor shall pay the costs; and where the indictment is returned by the grand jury "a true bill," and the defendant shall be acquitted on trial, the petty jury acquitting such defendant, shall return, together with their verdict, whether the county or the prosecutor shall pay the costs; and whenever the prosecutor shall become liable to pay costs, as aforesaid, the court shall enter judgment for such costs, against the prosecutor, and award execution for the same, as is done in civil cases: *Provided*, That nothing herein contained, shall render the prosecutor incompetent to be a witness, either before the grand jury or on the trial of the defendant.

All concerned to be included in one indictment.

Costs regulated.

SEC. 16. *Be it further enacted*, That when two or more persons are jointly guilty of an indictable offence, the names of all concerned shall be contained in one bill of indictment, for which no more costs shall be allowed than if the name of one person only was contained therein; but if the parties shall plead severally, and shall elect to be tried severally, the costs which shall accrue on the several proceedings shall be taxed severally, and the joint costs be apportioned between those who shall be convicted; but if the trial take place at different times, the first one convicted shall be liable to pay the whole of those costs which are joint; and if others are afterwards convicted, the court, on motion, shall apportion the joint costs among them, and compel them to refund their proportionate shares, respectively, to the first one convicted, who shall have paid such costs.

Wound given in one county and death in another, trial may be in either county.

Wound giv-

SEC. 17. *Be it further enacted*, That if at any time, a party receiving a wound, or other injury, in one county shall die of the same wound, in another county, within this state, it shall be lawful to prosecute the offender in either of those counties; and if at any time, a party receiving a wound or other injury within this state, shall die of the same, without the jurisdiction of this state, it shall be law ful to prosecute the offender or offenders, both principals and accessaries, in the county within this state where the wound or injury may have been inflicted.

en in this state and death without.

Sec. 18. *Be it further enacted*, That where any crime or indictable offence, shall be committed and done in one county, and other person or persons shall be accessary in any manner, to any such crime or offence, in any other county; then an indictment found and taken against such accessary or accessaries, in the county where the offence of accessary shall be committed or done, shall be as good and effectual in law, as if the principal offence had been committed or done within the same county, or the accessary or accessaries may be proceeded against in the county where the principal offence was committed.

Offence committed in one county and accessary in another

Sec. 19. *Be it further enacted*, That where any offence shall be committed on a county line, the trial may be in either county divided by such line; and where any offence shall be committed against the person of any one, and the person committing the offence shall be on one side of a county line, and the person receiving the injury shall be on the other side of the said line, the trial may be had either in the county where the injury was received, or in the county where the offender was, at the time of committing such offence.

Offence committed on a county line.

Sec. 20. *Be it further enacted*, That it shall not be necessary, on the arraignment or trial of any person for treason or felony, to ask the prisoner how he will be tried, nor to charge the jury to enquire whether the prisoner fled or not, or, what goods or chattels, lands or tenements, the prisoner at any time had.

Arraignment and trial.

Sec. 21. *Be it further enacted*, That in all cases where the party indicted shall, on being arraigned, obstinately stand mute, or refuse to plead, such standing mute or refusal to plead shall be adjudged and taken to be a denial to the facts charged in the indictment, and the trial shall thereupon proceed in like manner, and the record shall be in the same form, and the same judgment shall be given against the said party, if found guilty, as if such party, on being arraigned, had pleaded not guilty.

Standing mute and refusing to plead.

Sec. 22. *Be it further enacted*, That every person indicted for any capital offence, shall have a copy of the indictment, and a list of the jury, two entire days at least before the trial, and shall also be allowed to make his full defence by counsel learned in the law; and if such person is unable to employ counsel, the court is hereby required to assign to such person, at his request, such counsel, not exceeding two, as such person shall desire, and the said counsel shall have free access to such person, at all reasonable hours.

In capital cases, copy of indictment and list of jury to be given the prisoner.

Counsel.

Peremptory challenge.

*In other cases, three; see jurors, sec. 11.

SEC. 23. *Be it further enacted*, That every person arraigned for any crime punishable with death or imprisonment for life, shall be admitted, on his trial, to a peremptory challenge of twenty jurors, and no more: and every person arraigned for any offence punishable by stripes, standing in the pillory, or imprisonment for a term exceeding one year, shall be admitted to a peremptory challenge of ten jurors, and no more*; and no peremptory challenge shall be allowed on behalf of the state.

Indictment not quashed for want of formal words.

Amendments.

SEC. 24. *Be it further enacted*, That hereafter no indictment shall be quashed, or set aside, for the want of the words, "with force and arms," or any such words. And indictments and proceedings in criminal cases may be amended in point of form, at any time before the jury are sworn for the trial of the cause.

Jury *de mediatate* not allowed.

SEC. 25. *Be it further enacted*, That in no case shall the right to a trial by a jury *de mediatate lingua*, be allowed.

In trials for forgery, injured party competent as a witness

SEC. 26. *Be it further enacted*, That in trials for forgery the party upon whom the forgery is committed, shall be a competent witness to prove the forgery.

Witness entitled to restitution, not incompetent.

Civil remedy.

SEC. 27. *Be it further enacted*, That the competency of a witness shall not be questioned, because the law may award him restitution for an injury done, on the conviction of the party charged; but in all such cases the fines or penalties which would have gone to such person, had he not been a witness, shall go to the state for the use of the county, or to be otherwise appropriated according to law; and no restitution of property shall be awarded to him by the judgment of the court on such conviction; but the party injured may have his remedy by action at law against such offender, for such property, or for the injury sustained.

Continuances and new trials.

SEC. 28. *Be it further enacted*, That continuances and new trials may be granted in criminal cases, the same as in civil cases.

Punishment of death, how inflicted.

SEC. 29. *Be it further enacted*, That the manner of inflicting the punishment of death shall be by hanging the person convicted by the neck until dead, at such time as the court shall direct, not less than twenty days nor more than thirty days from the time sentence is pronounced, unless for good cause the court or governor may prolong the time.

Punishment of stripes.

Sheriff to be sworn.

SEC. 30. *Be it further enacted*, That when any person shall be sentenced to receive any number of lashes or stripes, the court passing such sentence shall, immediately on passing the said sentence, or as soon thereafter as may be, administer to the sheriff an oath that the number of lashes which such offender shall have been sentenced to receive will be by him openly and publicly and well and truly laid on such offender's bare back, and that without favor or affection.

Females not punishable by stripes.

SEC. 31. *Be it further enacted*, That where any female shall be convicted of any offence, the punishment for which, or any part thereof, shall be whipping or standing in the pillory, she shall in lieu thereof be imprisoned, at the discretion of the court before whom the conviction is had.*

*See ante chap. 1, sec. 101.

Imprisonment of convicts.

SEC. 32. *Be it further enacted*, That the imprisonment of convicts shall be in the common gaols of the counties, until otherwise directed. And if the convict shall be sentenced to imprisonment for a less term than one year, he shall be imprisoned at the expense of the county where the offence was committed; if for a greater term than one year, the remainder of the term, after the expiration of one year, shall be at the expense of the state: *Provided*, That the said convict is unable to support himself.

Convicts may be put to hard labor

SEC. 33. *Be it further enacted*, That convicts sentenced to imprisonment may, by the direction of the circuit court, be put to hard labor, either within the gaol or without it, in such manner as the said court shall direct, proper precaution being taken to prevent their escape; and the avails of their labor shall first be applied to defray the expenses of their imprisonment, and the remainder, if any, shall go to the county.

Fines appropriated.

SEC. 34. *Be it further enacted*, That all fines, imposed by virtue of any of the laws of this state for the punishment of crimes, shall be paid into the treasury of the county where the offence was committed, for the use of such county, unless otherwise expressly directed.

Party convict to be imprisoned until payment of fine and costs.

SEC. 35. *Be it further enacted*, That in all cases of conviction for any criminal offence, the party convict shall remain in confinement until all the costs attending his prosecution are paid, and his sentence is fully complied with.

Felons, detained for fine and costs only, may be hired out.

SEC. 36. *Be it further enacted*, That whenever any person convicted of any felony shall remain in prison for the space of three months, for not paying the fine imposed upon him by the court, or the costs of prosecution, it shall be lawful for the sheriff, under the direction of the court, to bind such prisoner to hard labor for any term not exceeding seven years to any suitable person who will discharge such fine and costs, or pay the costs (as the case may be.) And it shall be lawful for any person to whom such convict shall be so bound, to secure him without cruelty, by a chain and block, or otherwise, as to prevent his escape.

Costs to be paid by state

SEC. 37. *Be it further enacted*, That whenever the state or any county shall become liable to pay costs in any crimi-

or counties, how settled and adjusted.

nal case, the circuit court of the county in which the offence was alleged to have been committed shall audit and adjust the accounts of all persons charging fees, and cause the same to be certified under the seal of the court; and the person having such demand, certified as aforesaid, against the state, shall deliver the certificate to the auditor of public accounts, who shall draw his warrant therefor on the state treasury, to be paid out of the general contingent fund. And all such demands, certified as aforesaid, against any county, shall be presented to the tribunal transacting county business, who shall proceed thereon as in other liquidated demands against their county.

Lien on property of offender for fine & costs.

SEC. 38. *Be it further enacted*, That the property, real and personal, of every person charged under this act, shall be bound, from the time of his arrest, if he shall be arrested before indictment, if not, then from the time of finding the indictment, at least so far as will be sufficient to pay the extent of his condemnation. And it shall be the duty of the clerk of the circuit court, at the end of each term, to issue an execution for every fine which shall have been imposed during the term and shall remain unpaid; and for all costs, on conviction, in criminal cases; which executions shall be delivered to the sheriff, and shall be executed by him in the same manner as executions in civil cases; and it shall be no objection to the selling of property under such execution, that the body is in custody for the same demand; and it shall be the duty of the sheriff, to pay over all fines, according to the direction of the sentence pronounced.

Execution to be issued.

In what cases the state to pay costs.

SEC. 39. *Be it further enacted*, That in all capital cases, and in all cases where any fine is directed to go to the state, if the party accused shall be acquitted, or if convicted, shall have no sufficient property to pay the costs, the same shall be paid by the state; in all other cases, if the party accused shall be acquitted, or if convicted shall be unable to pay the costs, the county shall pay the same, except in cases where a prosecutor may be adjudged to pay the same: *Provided, however*, That the state or county (as the case may be) shall not be liable to pay the costs, where the party is convicted, until an execution shall have first issued against the property of the convict, as is above directed, and shall have been returned unsatisfied, for the want of sufficient goods, or chattels, lands, or tenements, nor unless the circuit court in which the conviction was had, shall also certify that in their opinion the said defendant is unable to pay the costs.

In what cases the county.

Fines, &c to be recovered by indictment.

SEC. 40. *Be it further enacted*, That in all cases where any fine or penalty is or shall be imposed by any statute of this state, as a punishment for any offence, the same may

Duty of grand jurors and officers.

Appropriation of fines.

be recovered on indictment; and it shall be the duty of grand jurors, and all peace officers, to give information to the prosecuting attorney, or grand jury, of the commission of any such offence. And in cases where one half of the said fine or penalty is given to the state or county, and the other half to some informer, or other person, who will prosecute for the same, the whole of such fine or penalty shall go to the state or county, unless the indictment shall be found upon the information or presentment of such person, and unless such person shall also endorse himself as prosecutor on such indictment, and be liable for costs, as prosecutors in other cases under this act.

Limitation of prosecutions.

SEC. 4[illegible]. *Be it further enacted,* That no person or persons shall be prosecuted, tried or punished, for any felony, (treason, murder, arson, and forgery, excepted) unless the indictment for the same shall be found by a grand jury, within three years next after the offence shall have been done or committed; nor shall any person be prosecuted tried or punished, for any misdemeanor or other indictable offence below the grade of felony, or for any fine or forfeiture, under any penal statute, unless the indictment or information for the same, shall be found or instituted within one year from the time of committing the offence or incurring the fine or forfeiture: *Provided,* That nothing herein contained shall extend to any person or persons fleeing from justice: *And provided, also,* That where any suit, information or indictment, for any crime or misdemeanor, is limited by any statute to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute: *Provided also,* That where any indictment or information shall be quashed or the proceedings on the same set aside or reversed, the time during the pending of the said indictment or information shall not be reckoned within this statute, so as to bar any new indictment or prosecution for the same offence. This act shall take effect and be in force from and after the fourth day of July next.

[*Approved, January* 14, 1825.]

DEPOSITIONS.

AN ACT to provide for the taking depositions in civil cases. 4 Jan 1825.

Depositions with interrogatories, in what cases allowed.

SEC. 1. *Be it enacted by the general assembly of the state of Missouri,* That when the testimony of any person shall be necessary in any civil cause depending in any of the courts of law or equity in this state, and such person resides out of this state, or, if in this state, be ancient or infirm, or be sick, or bound on a voyage, or about to go out of this state, or resides at or is about to go to a place more than sixty miles from the place of trial; it shall be lawful for the court in which such suit or action is pending, on affidavit or proof thereof, to the satisfaction of the said court, and upon motion by or on behalf of the party, in open court, and on such terms as the said court shall direct, to award and issue, under the seal of the said court, a commission, to such person as the said court may think fit, (to be in such commission named) or to any judge or justice of the peace of any state, territory, kingdom, or empire, authorizing such person, judge or justice, to examine *de bene esse*, such witness or witnesses, (naming him or them) on oath or affirmation, upon the interrogatories annexed to said commission, and reduce such examination to writing, and return the same, annexed to the said writ, into the said court, with all convenient speed; and the interrogatories for the examination of such witness shall be drawn and signed by the parties, or their counsel, in the cause in which the testimony is to be used; and each party shall be at liberty, with the approbation of the court, to insert in the said interrogatories, such questions as he or they may think proper or necessary; and the said commissioner, judge or justice, shall and may examine the witnesses named in such commission, or such of them as they can meet with, on oath or affirmation, upon and touching the matters contained in the interrogatories annexed, and none others, at any time and place when and where such witness or witnesses may be found

On affidavit, special commission to issue.

Interrogatories to be filed.

Deposition, how taken.

Sec. 2. *Be it further enacted*, That when the testimony of any witness residing or being within this state, shall be necessary, in any civil cause depending in any of the courts of law or equity in this state, it shall be lawful for the party wishing to use such testimony, to cause such deposition to be taken in such cause, before any judge or justice of the peace within this state, first causing a notice in writing, of the time and place of taking such deposition, to be served on the adverse party, if he reside within this state, or his attorney of record in the cause, if he is a nonresident, or if neither the party nor his attorney reside within this state, causing such notice to be put up, in the office of the clerk of the court wherein the action is pending, which notice shall be served or put up at least three days before the taking such deposition, and one day additional (Sundays inclusive) for every twenty-five miles travel from the place of serving or setting up such notice to the place of taking the depositions; and where the person whose testimony shall be required as aforesaid, shall reside or be out of this state, the court in which the action is pending, or the clerk thereof in vacation, on the applica-

Depositions of witnesses residing in the state.

Notice to be given.

Witnesses residing out of the state.

Dedimus to issue.

tion of the party wishing to use such testimony, or his attorney, shall award and issue a commission, under the seal of the court, to any judge or justice of the peace of any state, territory, kingdom, or empire, authorizing him to cause to come before him such person or persons as shall be named by either party his attorney or agent, and him or them examine, on oath or affirmation, touching their knowledge of any thing relating to the matter in controversy, and to reduce such examination to writing, and return the same, annexed to said writ, to the court wherein the action is pending, with all convenient speed; and such depositions may be taken accordingly, notice of the time and place of taking the same having been given as aforesaid: and any judge or justice of the peace, of this state, to whom application shall be made to take depositions, upon notice given as aforesaid, and the judge or justice to whom any such commission may be delivered to be executed, shall and may, at the time and place mentioned in such notice, examine any witnesses who may be produced or named to them by either of the parties, touching their knowledge of any thing relating to the matter in controversy.

Notice to be given.

When depositions shall be taken.

In what manner to be taken, and certified, and returned.

Sec. 3. *Be it further enacted*, That every witness to be examined as aforesaid, shall be sworn or affirmed to testify the whole truth, and his examination shall be reduced to writing, in presence of the commissioner, judge or justice, and signed by such witness; the said commissioner, judge, or justice, shall annex a certificate at the foot thereof subscribed by himself, stating that the same was subscribed and sworn to by such witness, and the date; and every such examination, and all exhibits produced to the said commissioner, judge, or justice, and proved or referred to by any witness, together with the commission and interrogatories (if any) shall be enclosed, sealed up, and directed to the clerk of the court in which the action is pending, and the name of the parties thereon endorsed: *Provided*, That when the depositions shall be taken by any judge or justice out of this state, such return shall be accompanied by a certificate of his official character, attested by the seal of the state, territory, kingdom, or empire in wich the depositions were taken, or by the seal of some court of record, within such state, territory, kingdom or empire.

Official character of officers, how attested.

Depositions to be read, if witness be absent or unable to attend.

Sec. 4. *Be it further enacted*, That every examination and deposition taken and returned according to the provisions of this act, shall and may be read, used and deemed as good and competent evidence in the cause in which it shall be taken as if such witness had been present and sworn or affirmed, and examined *viva voce* in open court on the hearing or trial thereof, if it appear to the satisfaction of the court that such witness resides or is gone out of the state, or is dead, or by reason of age, sickness or bodily infirmity is unable or cannot safely attend in said court, or that he resides more than sixty miles from the place of trial, or has gone to a greater distance from the place of trial than sixty miles without collusion or consent of the party requiring his testimony—but not otherwise; and unless the same shall be made to appear to the said court at the trial or hearing, such deposition or examination shall not be admitted to be read in evidence.

Officers taking depositions may compel the attendance of witnesses.

SEC. 5. *Be it further enacted*, That any commissioner, judge, or justice of the peace, required to take depositions in any cause pending in any of the courts of this state, or by virtue of any commission issued out of any court of record in any other state or territory, shall have power to issue subpœnas for witnesses to appear and be examined before them, and to compel their attendance in the same manner and under the same penalties as in any court of record of this state.

Compensation of witnesses.

SEC. 6. *Be it further enacted*, That every witness attending before any commissioner, judge or justice, to be examined as aforesaid, shall be entitled to a compensation for his time and attendance, and travelling allowance, at the same rate as for the time being is or shall be allowed by law to witnesses attending courts of record in this state; and the party requiring such examination or deposition shall pay all expenses thereof, but may be allowed for the same in the taxation of costs.

[*Approved*, *January* 4, 1825.]

DESCENTS AND DISTRIBUTIONS.

11 Jan. 1822.

AN ACT to direct Descents and Distributions.

Real estate of inheritance of persons dying intestate to descend in parcenary to their kindred

Course of descents.

SEC. 1. *Be it enacted by the General Assembly of the State of Missouri*, That henceforth when any person having title to any real estate of inheritance, or to any personal estate not sold and disposed of, or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary to his or her kindred, male and female, after the payment of his debts, and deducting the widow's right of dower, (if there be one) in the following course, that is to say: First, to his or her children, or their descendants, if any there be, in equal parts. Second, if there be no children, or their descendants, then to his or her father, mother, brothers and sisters, and their descendants, or such of them as there be, in equal parts. Third, if there be no children, or their descendants, father, mother, brother or sister, nor their descendants, then to the grandfather, grandmother, uncles and aunts, and their descendants, or such of them as there be, in equal parts. Fourth, if there be no children, or their descendants, father, mother, brother, sister, nor their descendants, grandfather, grandmother, uncle, aunt, nor their descendants, then to the great grandfathers, great grandmothers, and the brothers and sisters of the grandfathers and grandmothers, and their descendants, or such of them as there be, in equal parts, and so on in other cases without end, passing to the nearest lineal ancestors, and their children, and their descendants, or such of them as there be, in equal parts.

Posthumous children to inherit, but none except the children of intestate to take, unless in being at the intestate's death.

Sec. 2. *Be it further enacted*, That all posthumous children of the intestate shall inherit in like manner as if born in the life time of the intestate, but no right of inheritance shall accrue to any person whatsoever other than the children of the intestate, unless they be in being and capable in law to take as heirs at the time of the intestate's death.

Rule where the inheritance is to go by moieties to the paternal & maternal kindred.

Sec. 3. *Be it further enacted*, That if there be no children, or their descendants, father, mother, brother nor sister, nor their descendants, nor any paternal nor maternal kindred capable of inheriting, the whole shall go to the wife or husband of the intestate, and if the wife or husband be dead, it shall go to her or his kindred in the like course as if such wife or husband had survived the intestate, and then died entitled to the estate.

Where some one of the whole and others of the half blood.

Sec. 4. *Be it further enacted*, That in all cases before mentioned, where the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood of the intestate, and the other part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood, but if all such collaterals be of the half blood, they shall have whole portions, only giving to the ascendants (if there be any) double portions.

Where they shall take *per capita*.

Sec. 5. *Be it further enacted*, That where several lineal descendants and all of equal degree of consanguinity to the intestate however remote, or his or her father, mother, brothers or sisters, or his or her grandfather, grandmother, uncles and aunts, or any ancestor living, and their children, come into partition, they shall take *per capita*, that is to say, by persons; and where a part of them being dead and part living, the issue of those dead have right to partition, such issue shall take *per stirpes* or by stocks, that is to say, the share of their deceased parent.

Where *per stirpes*.

Advancements made

Sec. 6. *Be it further enacted*, That where any of the children of the intestate shall have received in his life time any

may be bro't into hotchpot.

real or personal estate by way of advancement, shall choose to come into partition with the other parceners, such advancement shall be brought into hotchpot, with the estate descended.

Alienage of ancestor, no bar.

Bastards may inherit.

Sec. 7. *Be it further enacted*, That in making title by descent, it shall be no bar to a demandant, that any ancestor, through whom he derives his descent from the intestate, is or has been an alien. Bastards also shall be capable of inheriting and transmitting inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

When bastards shall be legitimated.

Sec. 8. *Be it further enacted*, That when a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children if recognized by him as his, shall be thereby legitimated, and the issue of all marriages deemed null in law or dissolved by divorce shall nevertheless be legitimate.

Former acts repealed.

Sec. 9. *Be it further enacted*, That all acts and parts of acts coming within the purview of this act shall be and the same are hereby repealed. This act shall take effect and be in force from and after the passage thereof.

[*Approved*, 11*th January*, 1822.]

DETINUE.

18 Dec. 1824.

AN ACT concerning the action of Detinue.

Capias to issue on affidavit.

Bail required

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That in all actions of detinue, where the plaintiff shall file in the office of the clerk of the court in which such action is to be commenced an affidavit, on the oath or affirmation of the plaintiff or some other credible person, stating that the property, to recover which such action is about to be commenced, is the property of the plaintiff, stating the value thereof, and that the defendant unlawfully detains the same, the clerk shall issue a writ of *capias in detinue*, and endorse the amount so sworn to, and direct the sheriff to take bail in double that sum.

Sheriff to commit defendant or take bond.

Sec. 2. *Be it further enacted*, That it shall be the duty of any sheriff to whom a writ of *capias in detinue* shall be directed, to take the body of the defendant and commit him to the common gaol of the county, unless he shall enter enter into a bond to the plaintiff, conditioned that if judgment shall be rendered against him in such action, he will deliver to the plaintiff the property which shall be thereby recovered, and pay all damages which shall be assessed for the detention thereof, and costs of suit; and the sheriff shall return such bond, with the writ, as in other cases.

Sec. 3. *Be it further enacted*, That if any sheriff shall return any such writ executed, and shall not have the body of the defendant according to the command of the writ, or shall fail to take and return such bond, or the bond returned shall be adjudged insufficient by the court, and the defendant shall fail to perfect his bail if ruled thereto, the sheriff shall be made a co-defendant, and may defend the suit upon the pleas of the defendant, and shall be subject to the same judgment and recovery as the defendant, and be joined therein: *Provided*, That all questions concerning the sufficiency of such bond shall be determined during the return term.

Shff failing to return a bond. or an insufficient one.

Sec. 4. *Be it further enacted*, That when any bond as aforesaid shall be forfeited, the plaintiff shall have the same remedy against the bail, and the bail shall have the same remedy against their principal; and the sheriff, when made a co-defendant, shall have the same remedies against the principal and bail, as is or may be provided by law in cases of bail in other civil causes, and the same proceedings shall be had thereon.

Remedy of plff. against bail, and of shff. on bond.

Sec. 5. *Be it further enacted*, That any court out of which any writ as aforesaid, shall issue, or any judge thereof in vacation, may reduce the sum for which bail is demanded, and the court may accept the appearance of the defendant, and cancel such bond in the same manner, for the like causes, and with the like effect, as in other cases of bail in civil actions.

Amount of bail may be reduced by court, or common appearance accepted.

Sec. 6. *Be it further enacted*, That all actions commenced in manner aforesaid, shall be conducted and proceeded on in all things according to the principles and usages of law in actions of detinue; and if any verdict for the plaintiff shall omit the price, or value, or damages for detention, the court may at any time award an inquiry to ascertain the same.

Actions how conducted.

Verdict omitting damages

[*Approved, December* 18, 1824.]

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DIVORCE AND ALIMONY.

AN ACT concerning divorces and alimony.

17 Jan 1825.

Sec. 1. *Be it enacted by the general assembly of the state of Missouri*, That where a marriage hath been heretofore or shall hereafter be contracted and celebrated between any two persons, and it shall be adjudged in the manner hereafter mentioned, that either party at the time of the contract was and still is naturally impotent, or incapable of procreation, or that he or she hath knowingly entered into

Causes of divorce from bonds of matrimony.

a second marriage, in violation of the previous vow he or she made to the former wife or husband, whose marriage is still subsisting, or that either party hath committed adultery, or wilfully deserts and absents himself or herself, without a reasonable cause, for the space of two years; in every such case, it shall and may be lawful for the innocent and injured person to obtain a divorce from the bonds of matrimony; but no such divorce shall in any wise effect the legitimacy of the children, except in cases where the marriage shall be declared null and void from the beginning, on the ground of a prior marriage.

Legitimacy of children, not effected, except.

Causes of divorce from bed and board.

Sec. 2. *Be it further enacted*, That for extreme cruelty in either of the parties, the court may decree a divorce from bed and board, also where the petitioner shall pray to be divorced from bed and board only, the court may grant such a divorce, although the facts alleged and proved may entitle [him or her] to a divorce from the bonds of matrimony.

Circuit court to try applications for divorce.

Proceedings.

Bill to be sworn to.

Sec. 3. *Be it further enacted*, That the circuit court sitting as a court of chancery, shall have jurisdiction in all causes of divorce and alimony, or maintenance, by this act allowed; and the like process, practice and proceedings shall be had and pursued in all such causes as are usually had and pursued in other causes on the equity side of said court, except that the answer of the defendant shall not be under oath; the bill of the complainant shall be accompanied by an affidavit, to be annexed to the said bill, to be taken before any judge or justice of the peace, that the facts stated in the said bill are true, according to the best knowledge and belief of the said complainant, and that his or her complaint is not made out of levity, or by collusion, fear or restraint, between the said husband and wife, for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the said bill: the proceedings shall be had in the county where the complainant resides, and the process may be directed in the first instance into any other county in the state, where the defendant may reside.

Complainant must reside one year in the state, except, &c.

Sec. 4. *Be it further enacted*, That no person shall be entitled to a divorce from the bonds of matrimony, by virtue of this act, who has not resided in this state one whole year immediately previous to the filing of his or her petition or bill for such divorce, unless the offence or injury complained of was committed within this state, or whilst one or both of the parties resided within this state.

Collusion between the parties, or

Sec. 5. *Be it further enacted*, That if it shall appear to the court that the adultery, or other injury or offence complained of shall have been occasioned by the collusion of adultery by both, a bar to divorce.

the parties, or done with an intention to procure a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery, then no divorce shall be decreed.

Court decreeing divorce, to make order touching alimony.

May require security.

May compel payment of alimony.

May make alterations in allowance.

Sec. 6. *Be it further enacted*, That when a divorce shall be decreed, it shall and may be lawful for the court to make such order touching the alimony and maintenance of the wife, and also touching the care, custody and maintenance of the children, or any of them, as from the circumstances of the parties and the nature of the case shall be fit, reasonable and just; and in case the wife is complainant, to order the defendant to give reasonable security for such alimony and maintenance, and upon his neglect or refusal to give such reasonable security as shall be required of him, or upon default of himself and his security, if any there be, to pay or provide such alimony and maintenance, to award an execution for the collection of the same, or to enforce the performance of the said decree or order, or by sequestration of property, or by such other lawful ways and means as is usual and according to the course and practice of said court: the said court may also, on the application of either party, from time to time make such alterations as to the allowance for alimony and maintenance, as may be necessary and proper; it shall also be in the discretion of the court to order any reasonable sum to be paid for the support of the wife during the pendency of her application for a divorce.

Alimony, a bar to dower, when.

Rights under marriage contract.

Sec. 7. *Be it further enacted*, That where there shall be a divorce from the bonds of matrimony, the alimony allowed to the wife shall be in lieu of and a bar to her dower, but shall not effect any of the rights which may have accrued or which shall accrue under any marriage contract, but the said marriage contract shall have the same operation from the time of the divorce, as if the marriage had been dissolved by the natural death of either of the parties.

Divorce from bonds of matrimony, guilty party forfeits rights, &c.

Ex parte proceedings, how conducted.

Sec. 8. *Be it further enacted*, That in all cases of divorce from the bonds of matrimony, the guilty party shall forfeit all rights and claims under and by virtue of the marriage, nor shall the guilty party be allowed to marry again by reason of such divorce; and in all cases where the proceeding shall be exparte, it shall be the duty of the court before whom the petition is pending, before they shall grant such divorce, to require proof of the good conduct of the petitioner, and to be satisfied that he or she is an innocent and injured party.

Husband abandoning his family, court may

Sec. 9. *Be it further enacted*, That in case a husband, without any justifiable cause, shall abandon his wife, or separate himself from her, and refuse or neglect to main-decree maintenance.

tain and provide for her, it shall and may be lawful for the said court to decree and order such suitable support and maintenance to be paid and provided by the said husband for the wife and her children, or any of them, by that marriage, out of his property, and for such time as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the court; and to compel the defendant to give reasonable security for such maintenance and allowance, and from time to time to make such further orders touching the same as shall be just and equitable, and to enforce such decree and orders in the manner mentioned in the sixth section of this act; but during the time such maintenance shall be allowed by the decree or sentence of the court, the husband shall not be chargeable with her debts.

Repeal.

SEC. 10. *Be it further enacted*, That all laws and parts of laws coming within the purview of this act, be and the same are hereby repealed. This act to take effect and be in force from and after the passage thereof.

[*Approved*, *January* 17, 1825.]

DOWER.

5 Feb 1825.

AN ACT concerning Dower.

Widow to be endowed.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That every widow, whether alien or not, of any person who shall hereafter die, shall be endowed in the lands, tenements, hereditaments, and other real estate lying and being in this state, whereof her husband, or other person to his use was seized of an estate of inheritance in law or equity, during the coverture (to which she shall not have relinquished her right of dower, by deed duly executed and acknowledged in the manner which is or may be prescribed by law for that purpose,) and of all the personal estate and slaves belonging to her husband at the time of his death, and which shall remain after the payment of his just debts, in manner following, that is to say: If the husband shall leave no children or other descendants capable of inheriting, of all the real and personal estate which came to the husband in right of the wife by means of the marriage, absolutely, and of one full and equal half of all the real estate and slaves, and other personal property of which the husband was possessed (and which remains undisposed of) in his own right, absolutely;

If no children, or descendants.

and if there be such children or their descendants as aforesaid, then in one full and equal third part of such real estate and slaves for and during her natural life, and one

If there be children, &c.

equal third part of such other personal estate, absolutely: *Provided nevertheless*, That the provisions of this section shall not be so construed as to affect the rights of any creditor, or other person, on any contract entered into previous to the passage of this act: *Provided also*, That no widow shall be entitled to dower in any lands, tenements or hereditaments, which had been sold in good faith under execution against her husband in his lifetime; nor shall she be entitled to dower in any lands, tenements, or hereditaments, until all just debts due or to be due by her deceased husband shall have been paid.

Rights of creditors not effected.

Sale under execution, bar to dower

Debts to be first paid.

Sec. 2. *Be it further enacted*, That if the husband be impleaded for land or other real estate, and give up the same to his adversary by *covin*, his widow shall recover her dower of said land. And if the husband lose the land in demand by default, the widow demanding her dower thereof shall be heard; and if it appear that such judgment was by default, the tenant must show that he had and hath right in the said land, according to the form of the writ that he before sued out against the husband,—and if it be found that he has such right, and that the husband had no right in such lands, nor any other but he that holdeth them, the tenant shall go quit, and the widow shall not recover her dower therein; but if he show not the same, the widow shall recover her dower therein.

Judgment agt husband by default & covin, no bar to dower.

Sec. 3. *Be it further enacted*, That if any woman shall have been divorced from her husband, for the fault or misconduct of such husband (except where the marriage was void from the beginning) she shall not thereby lose her dower; but if such divorce be for her fault or misconduct, she shall forfeit her dower.

Divorce, when a bar to dower.

Sec. 4. *Be it further enacted*, That if any testator shall, by a will duly executed to pass real estate, devise or bequeath to his wife any portion of his real estate, such devise or bequest shall be taken to be in lieu of dower out of the real estate of her husband whereof he died seized, unless the testator shall by his last will and testament declare otherwise; and if the wife survive the husband, she shall not be entitled to dower in any of the lands or real estate whereof her husband died seized, unless she shall, by writing duly executed and acknowledged as in case of deeds for lands, and filed in the office of the court in which the will is proven and recorded, within twelve months after the proof of the will, declare that she will not accept the provisions made for her by said will, or any part thereof, and renounce all benefit which she might claim in the real estate of her husband by said will.

Devise of lands to widow, a bar to dower, unless otherwise expressed.

Or the widow renounce the provisions made by the will.

Sec. 5. *Be it further enacted*, That if any woman, prior

Jointure in lieu of dower when a bar.

to and in contemplation of marriage, shall, on agreement or marriage contract with her intended husband, or other person, receive an estate, either real or personal, to take effect after the death of her husband, by way of jointure as a provision for her support during life, and expressed to be in full discharge of all claim for dower, such estate shall be valid and a bar to dower in the estate of her husband; and when any lands, tenements or hereditaments have been or hereafter shall be conveyed to the husband and wife, or to any other person or persons, and to their heirs, and to the use and behoof of the said husband and wife, or to the use of the wife, for the jointure of the wife, then every such married woman having such jointure made shall not claim any dower in the residue of the lands, tenements or hereditaments of which her husband at any time was seized.

Jointure assured during coverture, or infancy of the wife, may be renounced and dower claimed.

Title to jointure failing, widow entitled to dower

Sec. 6. *Be it further enacted*, That if any deed of conveyance, assurance, agreement or contract for jointure as aforesaid be made after marriage, or be made before marriage and during the infancy of the wife, in either case the widow may at her election renounce her jointure and have dower; and in all cases, if the title to the estate settled on the wife as her jointure shall fail, or she be evicted from or cannot recover such estate, she shall then have dower in the estate of her husband; or if the title fail as aforesaid to a part only, then the deficiency shall be made up out of husband's estate. And when any deed, conveyance, assurance, agreement or contract for jointure as aforesaid, in lieu of dower, shall through any default fail to be a legal bar to dower, and the widow availing herself of such default shall demand her dower, then the estate and interest so conveyed or assured to such widow shall thereupon cease and determine.

Desertion and adultery a bar to dower,

Sec. 7. *Be it further enacted*, That if a wife voluntarily leave her husband and go away and continue with an adulterer, or after being ravished consent to the ravisher, she shall be disabled and forever barred from having her jointure or dower, unless her husband be voluntarily reconciled to her, and suffer her to dwell with him, in which case she shall be restored to her jointure or dower.

Right of widow, until dower assigned.

Sec. 8. *Be it further enacted*, That until dower be assigned to her, it shall be lawful for the widow to remain in and to hold, and enjoy the mansion house of her husband, and the messuages or plantation thereto belonging, without being liable to pay any rent for the same.

If dower not assigned, widow may

Sec. 9. *Be it further enacted*, That where any widow shall be entitled to dower, in any lands or other real estate, and she be deforced thereof, or cannot have it without suit, sue for and recover with damages.

or if her dower be unfairly assigned, or not assigned within twelve months after the death of her husband, she may sue for and recover the same with damages, that is to say, the value of the whole dower to her belonging, from the time of her husband's death, (if he died or shall die seized;) or from the time of demanding dower, (if the husband was or shall be seized, but did not, or shall not die seized) unto the day that she shall recover her dower.

Widow, claiming dower, to file a petition.

Summons to issue; service

Defendant not summoned, publication to be made.

SEC. 10. *Be it further enacted*, That when any widow claims dower in any real estate, she may file her petition, in the office of the clerk of the circuit court of the county wherein the lands or other real estate wherein she claims her dower is situate, or if the land is divided by a county line, then in either county, against any person claiming any interest in such lands, or being in possession thereof, or who shall deforce her of her dower therein: and the clerk shall thereupon issue a summons, endorsed or annexed to such petition in the nature of a writ of dower *unde nihil habet*, or a writ of right of dower, which shall be served in the manner, and within the time prescribed for the service of process in actions at law, and if the defendant appear and plead, the cause shall proceed according to the course of proceeding at law, and if any defendant shall not be summoned, or shall not appear, the court shall award an order of publication, which shall notify such defendant, that unless he appear on the first day of the next succeeding term, and proceed to trial, judgment will be rendered against him by default: which order shall be published in some newspaper, printed in this state, for two months, and when so published shall be equivalent to the service of a summons.

Several defendants, some appearing, others not, proceedings.

Claimants of land, may be made defendants.

SEC. 11. *Be it further enacted*, That when there are several defendants, some of whom are summoned or appear and others not, the demandant may proceed against those summoned or appearing, without regard to the others, or may continue the cause and take out *alias* writs or make publications as aforesaid, to bring in the other parties; and any person claiming title to the land whereof dower is claimed, may be made a defendant if he appear and apply for that purpose, and proceedings shall be had thereon, in all respects as if he were originally a party duly summoned.

Judgment by default, &c.

Or on trial of issues, for demandant.

SEC. 12. *Be it further enacted*, That if judgment be rendered by default, *nil dicit* or *non sum informatus*, the court shall hear the proofs and allegations of the demandant, or empannel a jury for that purpose, and if it be found upon such proceeding or on the trial of the issues, that the demandant is entitled to dower, the court or jury shall determine in what proportion, and the court shall thereupon

Com'rs. to be appointed to assign and admeasure dower.

render judgment, that she be seized of her dower accordingly, for and during her natural life; and that she recover the damages which may be assessed; and thereupon shall appoint three respectable and competent persons as commissioners, to assign and admeasure such dower, who before they enter upon the discharge of their duties, shall take an oath or affirmation, honestly and impartially, to execute the trust reposed in them respectively.

Com'rs. to set off widow's dower.

Cty. surveyor to attend.

Report of com'rs.

Proceedings thereon.

SEC. 13. *Be it further enacted*, That it shall be the duty of the said commissioners or a majority of them, to proceed to the lands or other real estate, and by actual survey and admeasurement, ascertain and set off the widow's dower thereon, according to the judgment of the court; and it shall be the duty of the county surveyor of the county, if thereto required by the said commissioners, to make such surveys and plats as the commissioners shall direct, and the said commissioners shall make full report of their proceedings, with a plat and boundaries of the land so assigned by them, as dower, to the court appointing them, at the next term thereof, which report if approved shall be recorded among the records of the court, but if it shall not be approved, the commissioners shall again proceed as before directed, and as often as may be necessary, until their report shall be approved, and such court may at any time discharge any commissioner or commissioners, and appoint others in their stead, and may supply any vacancy which may happen by death, resignation, or refusal to act, of any of the said commissioners.

If report approved, jury to assess damages.

Execution.

SEC. 14. *Be it further enacted*, That when any report assigning dower as aforesaid, shall be approved, the court shall empannel a jury to assess damages, and shall render judgment for the damages assessed, if the same has not before been done, and award a writ of possession according to the report of the commissioners, and execution for the damages.

If estate not susceptible of division, value of dower to be ascertained.

Judgment.

Damages.

SEC. 15. *Be it further enacted*, That if the commissioners aforesaid shall report that the lands or other estate, is not susceptible of a division without great injury thereto, a jury shall be empanneled to enquire of the yearly value of the widow's dower therein, and shall assess the same accordingly; and the court shall thereupon render a judgment that there be paid to such widow, as an allowance in lieu of dower, on a day therein named, the sum so assessed, as the yearly value of her dower, and the like sum on the same day in every year thereafter during her natural life; and such jury shall, moreover, (if the same have not been before done) assess the damages which may have accrued down to the time of rendering their verdict.

Summons in dower, not to abate, when.

SEC. 16. *Be it further enacted*, That no writ of summons in dower, called *unde nihil habet*, shall abate by the exception of the tenant or defendant, that the demandant hath received her dower of another person before her writ was sued out, unless he can shew that the dower so received was in satisfaction of her dower in the lands and tenements whereof she demands dower.

How heirs, executors, &c may proceed to assign dower.

SEC. 17. *Be it further enacted*, That when any widow shall be entitled to dower in lands or other real estate, whereof her husband died seized, it shall be lawful for any heir or heirs, legatee or legatees, or the guardians of such as are minors, entitled to any interest in such lands or real estate, or the executors or administrators of the intestate, or to any creditor of the widow, and after her marriage any creditor of her husband, to apply by petition to the circuit court of the county wherein the lands lie, to assign and admeasure such dower, giving twenty days notice in writing, of such intended application to such widow, by personal service or leaving a copy at her usual place of abode; and upon such application, and due proof of the service of such notice, the court shall appoint three commissioners, to assign and admeasure such dower, who shall take the same oath and perform the like duties, and the court shall proceed in like manner therein, as herein before provided in like cases, where the widow demands dower: *Provided*, That in proceedings under this section, there shall be no judgment for damages, and the costs and charges shall be divided and apportioned among the persons concerned, according to their respective interests in the lands and real estate out of which the dower shall be assigned.

Proceedings.

Assignment of dower by collusion, not obligatory, except as to parties and privies.

SEC. 18. *Be it further enacted*, That where a widow having no right to demand dower, sues out a writ of dower against the guardian of any minor, and the guardian endows the widow by favor, or makes default, or by collusion defends the plea faintly, whereby she is awarded her dower to the prejudice of such minor; such minor, when he shall arrive at full age, shall have an action to demand seizin, or to admeasure such dower, according to law; and all and every person, who shall not have been made a party to any action, and duly notified or summoned to appear, and shall not have appeared, to any action brought by any widow, for her dower, (except such as claim, under any of the parties who have appeared, or were summoned or notified, by title derived after the commencement of such action) shall have their action against such widow to admeasure the dower; and all other persons shall be concluded by the proceedings under the provisions of this act.

SEC. 19. *Be it further enacted*, That when any person

Proceedings to admeasure dower, in property assigned.

not concluded as aforesaid, shall file his petition, in the office of the clerk of the circuit court of the county in which the lands, or other real estate in which dower has been assigned under the provisions of this act, are situate, stating that such widow was not entitled to dower in such lands or other real estate, or that her dower was unduly assigned, and claiming title to the lands so assigned, or a part thereof, the clerk shall issue a summons thereon, in the nature of a writ of admeasurement of dower, which shall be served on such widow, as the like process in other cases at law; and such widow may appear and deny the title of the demandant, and put him upon the proof thereof, and may show her right of dower, and that it was properly and duly assigned, according to law; and may plead as many pleas as she may think proper, and have every defence which is or may be allowed in the law, in like cases; and proceedings shall be had as in ordinary cases at law, and if it be found that the demandant hath not good title to the premises, or that she is entitled to dower and the same has been assigned according to her right, she shall have judgment to retain her dower, and go quit of the said action; but if it shall be found that the demandant hath good title, and that such widow is not entitled to dower, he shall have judgment of seizin; and if upon proof of title in the demandant, it appear that the widow is entitled to dower, but that the same has [not] been duly assigned, the court shall appoint commissioners, as in case of petition of the widow, who shall take an oath and proceed in like manner as herein before provided in the assignment of dower; and the court shall proceed upon their report in the same manner, and shall have the same power to supply vacancies and discharge commissioners, and appoint others, as is provided in case of commissioners appointed to assign dower; and when the report is approved, shall award a writ of possession accordingly; and all parties to any such action, and those claiming under them, shall be concluded thereby: *Provided*, That where such action is brought by any guardian, his ward, when he comes of age, shall not be bound thereby, if the judgment be obtained by collusion, but may have his action as aforesaid, within three years after he comes of age; and in like manner the widow shall be aided, if she be impleaded as aforesaid and lose her dower by default, but she shall recover her dower, if she hath right thereto, as if no proceeding had ever been had.

Trial of issues.

Com'rs. to admeasure dower, their proceedings.

Report.

Infants not concluded, if judgment obtained by collusion.

Fees of commissioners to be taxed.

SEC. 20. *Be it further enacted*, That the charge of the commissioners for their services, not exceeding one dollar per day each, shall be taxed as other costs; and where

Costs.

judgment shall be for the demandant, he or she shall have judgment to recover [his or] her costs; and where the judgment shall be for the defendant, he shall recover his costs.

Judgment for damages.

Execution.

Sec. 21. *Be it further enacted,* That in all cases of judgments for damages in favor of any widow, under the provisions of this act, execution thereof shall be awarded only against the estate in which dower shall be assigned; and where a writ of possession shall not have been awarded, by reason that a division of the estate could not be had, and a yearly allowance shall have been adjudged in lieu thereof, the court, when any such yearly allowance shall become due, and be unpaid, shall award execution therefor, in favor of such widow, or if she die before the end of any year, then in favor of her executors or administrators, for all arrearages, and a just proportion of the last year's allowance, computing the time which had elapsed at the time of her death.

Proceedings under this act not to abate by death of parties.

Sec. 22. *Be it further enacted,* That no action brought by any widow as aforesaid, for the recovery of her dower, shall abate by the death of either party; but if the demandant die, her husband, if she be married, or if not, her executors or administrators, may appear and prosecute the action; but no admeasurement of dower, or writ of possession shall in such case be awarded, but he or they shall have judgment and execution only for the damages occasioned by the deforcement; and if she die before action brought, her executors and administrators may have and maintain an action as aforesaid, in which case no admeasurement shall be made, or writ of possession awarded, but upon the issue found, the court or jury shall assess the damages according to this act; and where one or more of the defendants die, the action shall proceed against the survivors; and if all the defendants die, the action may be revived against their executors and administrators, as in other cases,—but any other person claiming title to the lands may be made a party, by his voluntarily appearing to such action as a defendant.

Action for admeasurement not to abate by the death of plff.

Sec. 23. *Be it further enacted,* That no action as aforesaid, against any widow for admeasurement of dower, shall abate by the death of the plaintiff or demandant; but his heir or heirs, legatee or legatees, and the guardians of such as are minors, may appear and prosecute such action.

Appeal and writ of error allowed.

Sec. 24. *Be it further enacted,* That if either party shall feel aggrieved by the final judgment of the court, he may have an appeal or prosecute a writ of error, in the same manner as in other actions at law; but no appeal or writ of error shall operate as a supersedeas, unless the appellant or plaintiff in error shall enter into a recognizance as required by law. And where the judgment shall be that the widow be seized of her dower, the appellant shall become bound in such recognizance to pay not only all damages which have been adjudged, but all which may be adjudged to such widow in the action thereafter. And when any such judgment shall be affirmed, there shall be a writ to inquire of the mesne profits and damages by waste done after the first judgment.

[*Approved, February* 5, 1825.]

DUELLING.

CHAP. I.

13 Dec. 1822. **AN ACT** more effectually to prevent Duelling.

Preamble. WHEREAS, experience has evinced that the existing remedy for the suppression of the barbarous custom of duelling is inadequate to the purpose, and the progress and consequence of the evil have become so destructive as to require an effort on the part of the general assembly to arrest a vice, the result of ignorance and barbarity, justified neither by the precepts of morality nor by the dictates of reason: for remedy whereof,

Persons fighting duel, and resulting in death, deemed murder. *Be it enacted by the General Assembly of the state of Missouri*, That any person who shall wilfully and maliciously, or by previous engagement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and in so doing shall kill his antagonist or any other person or persons, or inflict such wound as that the person injured shall die thereof within three months thereafter, such offender, his aiders, abettors or counsellors, being thereof duly convicted, shall be guilty of murder.

[*Sections* 2 *and* 3 *repealed after* 4*th July*, 1825.]

Judges to give this act in charge to grand jury. SEC. 4. *Be it further enacted*, That it shall be the duty of the judges of the circuit courts, at their stated sessions, to give in charge expressly to the grand juries all the laws in force to suppress duelling, also to charge the grand juries to present all persons concerned in carrying, sending or accepting a challenge; and if any person shall be presented in such court, the said court shall proceed to the trial of the same in the same manner as in other penal offences.

Judge or justices to issue warrant agt. persons suspected. SEC. 5. *Be it further enacted*, That it shall be the duty of the judges of the supreme court, the judges of the circuit courts, the judges of the county courts, and justices of the peace of this state, who have good cause to suspect any person or persons are about to be engaged or aid in a duel, to issue his warrant to bring the party or parties before him; and if he find sufficient evidence of the fact, shall take of them a recognizance to keep the peace, not less than six months or longer at discretion, in such sum as in his discretion will be necessary to enforce the object, conditioned that the party or parties concerned shall not, during the time for which they may be bound, directly or indirectly be concerned in a duel, either with the person suspected or any other person, within the time limited by the recognizance. And any judge or justice of the peace failing to discharge his duty as required by this act, shall, on conviction thereof, be fined in a sum not exceeding five hundred dollars, to be recovered before any tribunal having cognizance thereof.

On sufficient evidence, to bind them to keep the peace.

Penalty for neglect.

Sec. 6. *Be it further enacted*, That if any person or persons shall fight a duel in this state, or aid or abet therein, whereby any person shall be killed, or in any wise violate the provisions of this act, and then flee into another state to avoid his trial, it shall be the duty of the executive, and he is hereby directed to adopt and pursue all legal steps to cause any such offender to be apprehended and brought to trial in the county where the offence was committed.

Offenders escaping from justice,

Duty of executive.

Sec. 7. *Be it further enacted*, That whenever any judge of the supreme court, or of any circuit or county court, or any justice of the peace, shall have good cause to believe, from his own knowledge or the oath or affirmation of any other person, that any person or persons may have violated any of the provisions of this act, it shall be his duty to issue his warrant against all such persons, requiring him or them to appear before him; and for want of other sufficient evidence, to examine on oath any or all of the seconds, aiders, abettors, counsellors, physicians and friends of the person or persons whom he may believe to have violated any of the provisions of this act, touching the offence so believed to have been committed; and such second, aider, abettor, counsellor, physician and friend shall thereupon testify the whole truth of their knowledge, touching the said offence. And it shall be the duty of such judge or justice of the peace, if he find sufficient evidence, to cause the parties violating the provisions of this act, and all witnesses, to enter into a recognizance, with three or more good and sufficient securities, in such sum as he may deem proper, conditioned that he or they will appear at the next term of the circuit court of the proper county, there to answer for the said offence, or to testify, as the case may be, and not to depart the court without leave first obtained; and such seconds, aiders, abettors, counsellors, physicians

Judges or justices to issue warrant agt. persons violating the provisions of this act.

Seconds, aiders, &c. to give evidence.

On sufficient evidence, parties and witnesses to enter into recognizance with security.

and friends shall be and they are hereby required to testify before grand juries, and also on the final trial of all persons charged with having offended against the provisions of this act. And no person thus testifying shall be liable to a prosecution or indictment for aiding, abetting or counselling in any case of which he or they shall thus testify; and in case any person, who shall have been compelled to testify as herein provided, be indicted for the offence touching which he has given evidence, it shall be the duty of the prosecuting attorney to enter up a *nolli prosequi*,—and such person so indicted or presented shall thereupon be finally discharged. And no prosecutor shall be required to be endorsed on any presentment made under this act.

Person testifying, not liable to indictment.

If indicted, prosecuting attorney to enter a *nolli prosequi*.

SEC. 8. *Be it further enacted*, That it shall be the duty of the circuit or prosecuting attornies for the state, to give information to the executive, whenever a case shall arise in their respective circuits which shall render the interposition of executive authority necessary. And said attornies, either at the first term of any circuit court within the circuit after the passage of this act, or at the time of their acceptance of their offices, where they shall hereafter be appointed, shall take the following oath: "I do solemnly swear, or affirm (as the case may be) that I will, to the best of my judgment, execute the duties imposed on me by the act more effectually to prevent duelling, so help me God."

Circuit or prosecuting attorney to give information to executive.

And to take an oath.

Form of oath

This act shall commence and be in force from and after the first day of January next.

[*Approved*, *December* 13, 1822.]

CHAP. II.

1st March, 1814.

AN ACT to prevent Vice and Immorality.

[*Sections* 1, 2, 3, 4 *and* 5 *repealed after* 4*th July*, 1825.]

SEC. 6. *And be it further enacted*, That if any person shall challenge another to fight a duel, or shall accept of a challenge to fight a duel, or shall knowingly be the bearer of a challenge for the purpose aforesaid, or shall be a second to any person that fights a duel, or shall aid, assist or procure any duel,—every such person offending, upon conviction thereof, shall forfeit and pay a sum not exceeding two hundred dollars.

Penalty for sending, bearing, or accepting a challenge, &c

[The residue of this act repealed after 4th July, 1825.]

[*Approved*, *January* 8, 1814.]

EJECTMENT.

AN ACT to regulate the Action of Ejectment. 4 Feb. 1825.

Form of the action.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri,* That in all actions of ejectment, the plaintiff may declare in his proper name, and instead of the fictitious suggestion of lease, entry and ouster, shall state that he is legally entitled to the possession of the premises, and aver the ejectment and trespass of the defendant; and the defendant may in his defence plead not guilty, or plead his title according to truth: and it shall be sufficient for the plaintiff on the trial to shew, that he is, and was, at the time of the commencement of the suit, entitled to the possession of the premises, and that the defendant was in possession thereof, at the commencement of the suit. The declaration shall be accompanied by a summons, which shall be served in the same manner as is provided for the service of a summons in other actions. The ejectment shall be put upon the docket, like other causes; but the person through whom the possession of the premises claims title, may on motion be admitted defendant.

Proof.

Summons, how served.

Title, upon which the action may be maintained.

Sec. 2. *Be it further enacted,* That any person claiming lands or tenements, by virtue of any pre-emption right, New Madrid location, entry with the register and receiver, confirmation by the board of commissioners of land claims, for the territory of Missouri, or by the recorder of land titles, or by concession, not exceeding one league square, or by settlement right, or other right, where such right or concession has been confirmed by the commissioners aforesaid, or recorder aforesaid, or by any act of congress; or where the same is held by deed, patent, entry, warrant, or survey, being confirmed as aforesaid; or by any French or Spanish grant, warrant, or order of survey, which prior to the tenth day of March, one thousand eight hundred and four, had been surveyed by proper authority, under the French or Spanish governments, and recorded according to the custom and usages of the country, although such person may not be in the actual possession; or if the same shall have been actually surveyed, by authority of the United States, since the tenth day of March, one thousand eight hundred and four, or by any proper officer, under the French or Spanish governments, prior to the said tenth day of March, one thousand eight hundred and four, such person shall, and may maintain actions of ejectment or trespass, in any court having jurisdiction thereof, against any person not having a better title:* and in all actions of ejectment,

Surveys.

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*Copies of plats, surveys, entries, New Madrid certificates, and locations, &c. certified by the surveyor general, &c. shall be receivwhere a verdict shall be found for the plaintiff, the jury shall also find damages for the mesne profits, up to the time of rendering the verdict: *Provided, however,* That mesne profits, shall not be recovered for any time prior to the commencement of the suit, unless the plaintiff shall prove that the defendant had knowledge of his claim, and then only from the time of such knowledge coming to the defendant.

Occupying claimants entitled, in certain cases, to compensation for improvements, upon recovery in eject.

Claimant to file a bill in equity.

Injunction may be granted.

Plff in the ejectment may file his cross bill.

Proceedings.

If improvements exceed the value of land.

SEC. 3. *Be it further enacted,* That when any person, being in the actual possession and cultivation of any land, under and by virtue of any grant, warrant, concession, settlement right or survey, to which the right of the United States has been, or may hereafter be relinquished by the said claim being confirmed, shall hereafter have judgment of dispossession against him, in an action of ejectment, or any other real action, in favor of a person having a better title, such person so dispossessed, may file his bill in equity, to recover compensation, for all valuable and lasting improvements, which he may have, *bona fide*, made on said lands, under such title; in which bill the complainant shall set forth the nature of his title, the length of his possession, of the kind and value of the improvements made, and shall also aver that he entered into the possession of the premises, believing that he had a good title thereto, and that he made the said improvements, for which he claims pay, in good faith, believing the land to be his own, and shall verify the said bill by his oath or affirmation; and if from the shewing of the said bill, the said court in which the proceeding is had, or any judge of the supreme or circuit court in vacation, shall be of opinion that the complainant is entitled to compensation for his improvements, they may grant an injunction to stay the plaintiff at law, from taking possession of the premises, until the value of the said improvements shall be ascertained, or until the further order of the court; it shall also be lawful for the plaintiff in the suit at law, to file his cross bill, praying for leave to relinquish the land to the defendant, and to receive the value thereof, aside from the improvements; which said bills shall be proceeded on, according to the usage and practice of the said court, in other like cases. And if on inquiry by the said court, before a jury, or otherwise, it shall appear, that the value of the said improvements exceed the value of the lands, aside from the said improvements, the said court may decree, that the said defendant, in the suit at law, shall take the said lands, paying the ap-

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ed in evidence, (*See title* "*Evidence*," *sec*. 4)—Copies of confirmations, of New Madrid certificates, and of the books of the recorder, duly certified, shall be received in evidence, (*see* "*Evidence*," *sec*. 5.)

praised value therefor; and that in default of such payment by the time limited in the said decree, the plaintiff may have possession of the said lands, discharged from all claims for the said improvements; but if the value of the lands shall exceed the value of the improvements, the said plaintiff in the suit at law, may be decreed to pay for the said improvements, before he shall be allowed to have possession of the said lands; or the said court may in its discretion decree a partition of the premises, between the parties according to their respective rights in equity, unless the said plaintiff shall insist upon his right to keep the said lands, and pay for the improvements: and the said court may make such further orders and decrees, in and concerning the premises, as may be necessary, and shall comport with equity and good conscience: *Provided, however,* That if the said plaintiff shall prove to the court, that he gave notice to the said defendant in writing of his claim, and the nature of his title, before the making of the said improvements, then the said defendant shall not be entitled to compensation for the said improvements, made after such notice, and notice to an occupying claimant, shall bind all those claiming by, from, or through such occupying claimant, to the extent of such claim: *Provided, also,* That this act, shall not be construed, so as to authorise the occupying claimant, to be twice paid for his improvements; and in all cases where he shall be paid for his improvements, by any other person than the proprietor of the better title, such person shall have the same redress, as is allowed the occupying claimant.

If value of land exceed improvements.

No improvements made after notice, to be paid.

SEC. 4. *Be it further enacted,* That whenever the said plaintiff, shall be allowed to relinquish the land to the defendant, as is provided in the preceding section, he shall, upon the payment of the money, by the defendant, make to the said defendant, a deed of general warranty of the said land.

Conveyance to be made in certain cases.

SEC. 5. *Be it further enacted,* That no improvements which have been made, prior to the twenty third day of January, one thousand eight hundred and sixteen, shall be claimed under this act.

Improvements made prior to 3d Jan. 1816.

[*Approved, February* 4, 1825.]

ELECTIONS.

AN ACT regulating Elections.

24 Dec. 1824.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That on the first Monday in August in every second year, reckoning from the first Monday in August,

General election to be held 1st Mon-

day of August, every second year.

one thousand eight hundred and twenty-four, there shall be held, in each township in the several counties in this state, an election for a sheriff and coroner, for a representative to the congress of the United States, for representatives to the general assembly of this state, and for senators in those districts where the term of service of those elected at any preceding election for senators shall have expired.

Election for governor & lieut. gov.

Sec. 2. *Be it further enacted*, That on the first Monday in August, every fourth year after the first Monday in August, one thousand eight hundred and twenty-four, there shall be held, at the places aforesaid, an election for governor and lieutenant governor,—a certificate of which election shall be transmitted to the first session of the next general assembly thereafter, by the clerk of the court or tribunal of each county for the transaction of county business.

Districts.

Place of holding elections to be designated by cty. court

Sec. 3. *Be it further enacted*, That each township now in this state, or that may be hereafter established in any county in this state, shall compose an election district; and the county court of each county, or other tribunal having the transaction of county business, shall, within one year after the passage of this act, name a certain house in each township, as near central to the inhabitants of said township as circumstances and convenience will admit, where the election shall be held,—and also, when any new township shall be formed, they shall designate the house where the election shall be held as aforesaid. And if the said court or tribunal shall neglect in any case to designate the house where the said election in any township shall be held, it shall be the duty of the sheriff to fix the place, when he shall give notice of the said election as is provided in the next section.

Court neglecting, shff to fix the place.

Sheriff to give notice of general election.

Sec. 4. *Be it further enacted*, That the sheriff of each county in this state shall, one month previous to each general election, cause an advertisement to be set up at the several places of holding the elections, and at three other of the most public places in each township in his county, stating the time when, and place where, an election shall be held, and the number of officers at that time to be chosen.

Notice of special election.

Sec. 5. *Be it further enacted*, That the governor, when he issues a writ of election to fill any vacancy that may happen, which vacancy is to be filled by an election of the people,* shall mention in said writ how many days notice the sheriff of the county or district shall give of said election.

*See constitution, art. 3. sec 9; and post Legislature, chap. 2.

Judges of

Sec. 6. *Be it further enacted*, That the tribunal for the transaction of county business, in the several counties of election to be appointed

this state, shall, from time to time, as occasion may require, appoint three discreet persons in each township, having the necessary qualifications of voters, to act as judges of the election in said township; and in case any of the judges so appointed shall fail to attend, or refuse to act, the remaining judge or judges shall have power to fill such vacancy; and if all the judges shall fail to attend, or refuse to act, on the day of any election, the electors present may appoint three judges to conduct said election, who shall possess the qualifications aforesaid.

Judges of election to take oath.

SEC. 7. *Be it further enacted*, That the judges appointed as aforesaid shall, before entering upon the duties of their appointment, severally take the following oath or affirmation: "I, A. B. do solemnly swear, or affirm (as the case may be) that I will faithfully and impartially discharge the duties of judge of the present election, according to law and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same."

Clerks of election, appointment and duty.

SEC. 8. *Be it further enacted*, That the said judges, after being qualified as aforesaid, shall appoint two clerks,—whose duty it shall be faithfully to record the names of all the voters that may be allowed to vote, and distinctly to carry out in lines and columns to be ruled for that purpose, for whom the said person votes, and to do and perform all duties that may necessarily be required of them as clerks in conducting said election; and who shall, before entering upon the duties of their appointment, take an oath faithfully and impartially to discharge the duties enjoined upon them by law.

Oath.

Polls, when to be opened and closed.

SEC. 9. *Be it further enacted*, That the judges of all elections shall cause the polls to be opened in their respective townships by eight o'clock in the morning, and shall continue the same open until six o'clock in the evening, and no longer: *Provided*, That the court or tribunal for the transaction of county business of the respective counties, may direct the polls to be kept open for two days in such townships as may be deemed necessary.

Polls may be kept open two days, by order of court.

Returns to be made by judges.

Abstracts & poll books.

SEC. 10. *Be it further enacted*, That, at the close of each election, the judges of the several townships shall cause a fair abstract of the votes given for each person to be made out, and certified under their hands and attested by their clerks; which they shall cause to be transmitted, together with the poll books, by one of their clerks to be chosen by lot, to the clerk of the court or tribunal having the transaction of county business for the county in which said election is held, within five days after a general election and three days after a special election.

Polls to be cast up and arranged by clerk of cty. court and two justices.

Certificate of election of representatives

Of senators,

Sec. 11. *Be it further enacted*, That the clerks of the several courts or tribunals as aforesaid, shall respectively, within eight days after each general election and within four days after each special election, taking to his assistance two justices of the peace or justices of the county court, or one of each, in his county, carefully examine and cast up the number of votes given for each candidate in his county; and shall give to the person having the highest number of votes for representative or representatives to the general assembly, a certificate of his or their election; and it shall, moreover, be the duty of said clerk, in those counties where one or more senators are or shall be elected, to give to such senator or senators having the highest number of votes, a certificate as aforesaid. And in all senatorial districts composed of two or more counties, the clerks of all the counties composing said district shall transmit to the office of the clerk of the county first named in said district, within twelve days after each general election and within six days after each special election, a certificate, under their hands, of the number of votes given for each candidate in their county; and the clerk of the county to which such return shall be made, after examining said return as aforesaid, shall give the person having the highest number of votes a certificate of his election, as before stated in the case of representatives.

Abstract of votes of election for representative to congress, governor, & lieut. gov. to be returned by mail.

Sec. 12. *Be it further enacted*, That the clerks of the several counties, to whom a transcript of the votes is directed to be returned as aforesaid, shall, within two days after the time limited for the examination of the said votes, deliver into the nearest post office, on the most direct and expeditious mail route to the seat of government, a fair abstract of the votes given in their county for a member to the congress of the United States; and also after each general election, when a governor and lieutenant governor are to be chosen, a fair abstract of the votes given in his county for those officers, and also the name or names of the several persons elected in his county to the general assembly, which abstract shall be sealed and directed to the secretary of state for the state of Missouri; and the said clerk shall keep an abstract of the said votes on file in his own office.

Returns by mail failing.

Special messenger to be sent by sec. of state.

Sec. 13. *Be it further enacted*, That if there shall be a failure to receive any of the returns at the seat of government, directed to be sent by mail as aforesaid, for one mail after the same ought to have been received according to the regular course and transportation of the mail, it shall be the duty of the secretary of state to despatch a special messenger into the county from which such failure has taken place, to obtain the abstract of the votes as aforesaid. And if such failure shall have happened by the neglect of the clerk to deliver the abstract of the votes into the post office as is above directed, he shall forfeit to the state the sum of two hundred dollars, and the expense of the said special messenger, to be recovered by information in any court having cognizance thereof: *Provided however*, That the said secretary may in his discretion, delay longer than one mail after such failure, if the distance of the county from which the failure hath happened will justify any delay, taking care that the return from such county be obtained by the time that the returns ought to arrive from the most remote counties: *And provided further*, That the said secretary shall delay in no instance to despatch a special messenger where the returns from any county shall have failed to arrive at the end of forty days from the time of holding the election.

Failure happening thro' default of clk. penalty.

Proviso.

Sec. 14. *Be it further enacted*, That within sixty days after each general election, or sooner if the returns shall all have been made, the secretary of state, in the presence of the governor, shall proceed to cast up the votes given in the several counties in this state, for a member to congress; and it shall be the duty of the governor, to give to the person having the highest number of votes, a certificate of his election, under his hand, with the seal of state affixed thereto: *Provided however*, That should any two or more persons have an equal number of votes, and a higher number than any other person, the governor, in such case, shall issue his proclamation, giving notice of such fact, and that an election will be held at the several places of holding elections in the state, for said member of congress; in which proclamation shall be mentioned, the day on which the election is to take place; which election shall be conducted and the returns made, agreeably to the provisions of this act: *Provided also*, That the governor may, in the case of special elections, if he shall think proper, direct in his proclamation, that the returns shall be forwarded by special messengers.

Votes for representative to congress, to be cast up and arranged

Certificate of election.

Equality of vote, new election to be ordered.

Governor may require returns to be sent by special messenger.

Sec. 1[illegible]. *Be it further enacted*, That within two days after the meeting of each general assembly, the secretary of state shall lay before each house of the general assembly, a list of the members elected to said house, agreeably to the returns made to his office; and also after each election of governor and lieutenant governor, it shall be his duty, within the time aforesaid, to lay before the general assembly, a complete abstract of the votes given for the officers last mentioned; and the two houses shall without delay, assemble in the hall of the house of representatives,

List of members elected to be laid before each house.

Abstract of votes for governor and lieut. gov to be transmitted to general assembly.

Examined in joint meeting

and the president of the senate and the speaker of the house of representatives, shall, in the presence of both houses, examine the returns, and declare who are duly elected to fill said offices respectively; and if any two or more persons shall have an equal number of votes for the same office, and a higher number than any other person, the two houses shall, by joint vote, determine the election; and the president of the senate and speaker of the house of representatives, shall make out and deposite in the office of the secretary of state, a certificate declaring what persons have been elected to said offices.

In case of tie, election to be determined by joint vote.

Compensation to clerks and special messengers.

Sec. 16. *Be it further enacted*, That there shall be allowed to the clerks of the respective counties, for sending or conveying the returns to the post office, as is above directed, and for sending or conveying the the returns of any senatorial election, into any other county within the district, as occasion may require, and also to any special messenger who may be employed to convey the returns of the election for a member of congress, and governor and lieutenant governor, at the rate of ten cents per mile.

Votes to be given *viva voce*, or by *ticket* read aloud.

Sec. 17. *Be it further enacted*, That the votes given at all elections in this state, shall be given *viva voce*, or by a ticket handed to the judges and then read, and the clerks to note them as before.

Oaths, by whom administered.

Sec. 18. *Be it further enacted*, That the several oaths required to be taken by this act, shall be administered by a justice of the peace, if any shall be present; but if there should be no justice of the peace present, the oath shall be administered by any one of the judges; and in either case, a certificate of their qualifications shall be returned with the return of the votes.

Oath of judges to be certified with return.

Judge or clk undertaking and failing to perform duties, subject to a fine.

Sec. 19. *Be it further enacted*, That if any judge or clerk, after they shall have undertaken to perform the duties pointed out in this act, shall fail so to do, he shall be subject to a fine of two hundred dollars, to be recovered by any person who will sue for the same, by action of debt before any tribunal having competent jurisdiction, or by presentment of a grand jury, in which case the fine shall go to the use of the county; and if any person employed to carry the returns of any election, shall fail to do so in due time, he shall be subject to a fine of two hundred dollars, to be recovered as in the case of a judge or clerk: *Provided*, That nothing herein contained, shall be so construed as to impose the aforesaid penalty on any of the aforesaid persons who are prevented by sickness, inability, or unavoidable accident, from performing the several duties assigned them by this act.

Messengers employed to carry returns failing, fined.

Proviso, in case of sickness, &c.

Sec. 20. *Be it further enacted*, That in all cases where any person offers to vote, and neither of the judges is personally acquainted with the qualifications of such person, either of the judges shall have power to administer an oath to such person, and examine him touching his qualifications as a voter; and in all cases where a person offers to vote in a township of which he is not a resident, if he shall possess the necessary qualifications of a voter, he shall be at liberty to vote, on his taking an oath that he has not voted and will not vote in any other township, during the present election; and whenever any person, who shall offer himself as a voter at any election, shall be excluded from voting, by the judges, they shall cause his name to be entered on the poll book as a rejected voter, and shall also take down the names of the persons for whom such person wishes to vote.

Voters may be examined on oath, as to his qualifications.

Persons voting out of their township.

Names of persons whose votes are rejected, to be recorded.

SEC. 21. *Be it further enacted*, That all judges, clerks, and voters, shall be free from arrest, except for felony or breach of the peace, in going to, attending on, and returning from all elections.

Judges, clks. and voters privileged from arrest.

SEC. 22. *Be it further enacted*, That it shall be the duty of the constable in each township, to attend the elections in the township of which he is constable, and to do and perform such duties as shall be enjoined upon him by law, under the directions of the judges.

Constable to attend; duty.

SEC. 23. *Be it further enacted*, That the judges of the several elections in this state, shall have power to preserve good order, and to punish any disorderly person for contempt, by fine, not exceeding twenty dollars, at their discretion, and to commit the offender to the gaol of the county, until the amount of fine so inflicted shall be paid: *Provided*, Such imprisonment shall not exceed ten days.

Judges may fine disorderly persons.

SEC. 24. *Be it further enacted*, That whenever there shall be a tie, or an equal number of votes, given for any two candidates having the highest number of votes, other than those duly elected, to fill the office or place of senator or representative to the general assembly, sheriff or coroner of the county; it shall be the duty of the clerk, justice, or justices, casting up the number of votes, or a majority of them, to issue their order to the sheriff or coroner of the county, or senatorial district, where the same may occur, directing him or them to issue his or their proclamation for the holding of an election agreeably to the provisions of this act; and in all cases of such special election, the clerk, and justice or justices, or a majority of them, when they issue the order to the sheriff or coroner, shall in said order state the day on which the election shall be held, giving reasonable time for the same to be promulgated.

In case of a tie, new election to be held.

Clerks and justices to issue orders.

SEC. 25. *Be it further enacted*, That when the election

Contested election for sheriff or coroner, proceedings.

of any sheriff or coroner shall be contested, it shall be before the circuit court of the county, where such election shall have been held, and the person contesting such election shall give to the opposite party notice thereof in writing at least fifteen days before the term of the court, at which such election shall be contested, which notice shall specify the grounds on which he intends to rely, and if any objection be made to the qualification of any voters, the names of such voters with the objections shall be stated in the notice; and the parties on application to the clerk of said court shall be entitled to compulsory process for witnesses, which shall be executed and returned in the same manner, and such witnesses subject to like penalties as in other cases before the said court, or either party may on giving sufficient notice thereof to the other take depositions, to be read in evidence on the trial; and the said court shall at the first term, (if twenty days shall then have elapsed after such election, and if less than twenty days, then at the second term,) in a summary way determine the same according to evidence.

Contested election of senators and representatives, proceedings.

Testimony to be taken.

To be certified.

No testimony to be ta-

SEC. 26. *Be it further enacted*, That if any candidate of the proper county or district, choose to contest the validity of any election, or the right of any person proclaimed duly elected to hold his seat in the senate, or house of representatives of this state, such person shall give notice thereof in writing to the person whose election he intends to contest, or leave a written notice thereof at the house where such person last resided, within twenty days after the return of the election to the clerk's office as aforesaid, expressing the points on which the same will be contested, and the names of the two justices of the peace, who will attend at the taking of the depositions, and when, and where they will attend to take the same: *Provided*, That the time fixed upon for taking such depositions, shall not exceed forty days from the day of election; and the said justices or either of them shall have power, and they are hereby authorised and required to issue subpœnas, to all persons whose testimony may be required by either of the parties, commanding such persons to appear and give testimony at the time and place therein mentioned, under the penalty of fifty dollars, to be levied upon each and every delinquent who hath been duly served with process. And the said justices when met shall hear and certify, under seal, all testimony relative to such contested election, to the president of the senate, if the contest is for a seat in the senate, if for a seat in the house of representatives, then to the speaker of the house of representatives. No testimony shall be received by the justices on the part of the person contesting the election, which does not relate to the points specified in the notice, a copy of which notice attested by the person who delivered or served the same, shall be delivered to the said justices, and by them transmitted with the depositions.

ken, except to points specified.

Sec. 27. *Be it further enacted*, That all contested elections for governor or lieutenant governor, shall be decided by the joint vote of both houses of the general assembly: the joint meeting of the two houses, when deciding on any such contested elections, shall be held in the hall of the house of representatives and the president of the senate shall preside.

Contested election for gov. & lieut. gov. to be determined by legislature

Sec. 28. *Be it further enacted*, That whenever any person chooses to contest the election of governor or lieutenant governor, he shall present a petition to the general assembly setting forth the points on which he will contest the same, and the facts which he will prove in support of those points, and shall pray for leave to produce his proofs when and where the general assembly will hear the same; and thereupon a vote shall be taken separately in each house, by yeas and nays, upon the said petition, whether the prayer thereof shall be granted; and if a majority of the whole number of votes of both houses, shall be in the affirmative, they shall proceed to appoint a joint committee to take the testimony on the part of the petitioner, and also on the part of the person whose place is contested, which committee shall have power to send for witnesses, or to issue warrants under the hand of the chairman to any judge, or two justices of the peace, to take the depositions of witnesses at such time and place as the said warrant shall direct, which warrant shall mention the points to which the testimony is to be taken. Reasonable notice shall be given by the party in whose favor any depositions shall be allowed to be taken, to the opposite party, of the time and place of taking the same; and the said judge and justices shall procced in all things in procuring the attendance of witnesses, and in taking and certifying the testimony as is directed in the last preceding section. The said parties shall also be allowed to attend the examination of witnesses before the committee and to cross-examine them, but no testimony shall be taken except on points set forth in the petition. The committee shall report the facts by them found to the respective houses, and thereupon a day shall be fixed by a joint resolution for the meeting of the two houses to decide upon the same, on which decision the yeas and nays shall be taken by the clerks of the respective houses, and shall be entered upon the respective journals.

Party contesting election of gov. or lieut. gov. to present a petition, stating points.

Petition to be determined on.

Committee to take testimony.

Process for witnesses.

Depositions.

Report of committee & proceedings thereon.

Fines and forfeitures appropriated

SEC. 29. *Be it further enacted*, That all fines, penalties and forfeitures, by this act imposed, and which are not herein before otherwise appropriated, shall be, and they are hereby appropriated to the use of the county.

[*Approved*, *December* 24, 1824.]

ELECTORS.

18 Dec. 1824.

AN ACT to provide for choosing Electors of President and Vice President of the United States.

Election districts, established.

First district.

*Lafayette; see Counties, chap. 1, sec. 16. ante p.236

2d district.

Third district

New counties, how arranged.

In case of new apportionment, governor to lay off districts.

SEC. 1. *Be it enacted by the general assembly of the state of Missouri*, That the state shall be divided into three districts, for the purpose of choosing three electors, to elect a president and vice president of the United States, in the following manner, to wit: the first district shall be composed of the counties of Clay, Ray, Chariton, Howard, Boone, Callaway, Cole, Cooper, Saline, and *Lillard*;* the second district shall be composed of the counties of Ralls, Pike, Lincoln, Montgomery, St. Charles, St. Louis, Franklin, and Gasconade; the third district shall be composed of the counties of Washington, Jefferson, Ste. Genevieve, Perry, Cape Girardeau, Scott, New Madrid, Wayne, Madison, and St. Francois; and when any new county shall be made, it shall be attached to and become a part of that district, out of which the new county, or the greatest part thereof, may have been taken, unless otherwise provided by law; and when any new apportionment shall be made of the members to be elected to the house of representatives of the United States, whereby the number of electors to which this state may be entitled, shall be increased or diminished, it shall be the duty of the governor to lay off the state into as many districts as shall be equal to the number of electors to which the state shall then be entitled, so that the said districts contain, as near as may be, an equal number of free white male inhabitants, and that no county shall be divided; and it shall be the duty of the governor, whenever he shall exercise the power hereby vested in him, to give notice of the divisions made by him, by proclamation, to be published in all the newspapers printed in this state, sixty days at least before holding the first election under such arrangement.

Elections, when to be held.

SEC. 2. *Be it further enacted*, That the qualified voters in each of said districts, shall meet at their respective places of holding elections, on the first Monday of November, in the year one thousand eight hundred and twenty-eight, and on the first Monday of November, in every fourth year thereafter, unless the congress of the United States shall appoint a different day, and in that case on such day as the said congress shall appoint; and shall proceed to choose as many fit and proper persons as the state shall then be entitled to, as electors of president and vice president, one of whom shall be a resident of each district then established for the purpose of choosing such electors; which election shall be conducted by the judges who may have been appointed to hold the general election of the state for the same year, and under the same regulations, and have the same public notices thereof given by the sheriff in each county, as is or may be required by the law regulating such general elections; and it shall be the duty of the judges of such elections, in the different townships, to make return thereof to the clerks of the tribunals having the transaction of county business for their respective counties, within two days after such election,—which clerks shall, within two days after they receive such returns, certify and transmit the same by some person employed for that purpose to the governor, whose duty it shall be, on the receipt of the certificates from the several counties in each district which he may have received within fifteen days after the day of election, immediately to add up the votes from the several counties; and the person (residing in any one district) having the highest number of votes given in the state for any one person residing in the same district, shall by him be declared duly elected elector for said district; and if two or more persons residing in any one district shall have an equal number of votes given in the state as aforesaid, and more than any other person residing in the same district, the governor shall immediately notify the general assembly thereof,—and such election shall be determined by joint vote of the senate and house of representatives, by choosing one of the persons so having an equal number of votes. And it shall be the duty of the governor, at the expense of the state, in all cases, immediately to notify the persons chosen of their election, as soon as the same shall have been ascertained agreeably to the provisions aforesaid.

Number of electors to be voted for; one to reside in each district.

Election, how conducted.

Returns by judges of election.

Returns to governor.

Votes to be arranged, and election determined.

In case of a tie, election determined by general assembly.

Persons elect to be notified

SEC. 3. *Be it further enacted*, That all contested elections for electors shall be determined by joint vote of the senate and house of representatives, and the proceedings in contesting such elections shall be the same in all respects as in contested elections for governor.

Contested elections, how determined.

SEC. 4. *Be it further enacted*, That the governor shall, on or before the meeting of such electors, cause three lists of the names of such electors to be made and delivered to

List of persons chosen to be deliv-

ered to electors.

Compensation for carrying returns and notices.

them as required by act of congress; and the persons employed in giving the notices or conveying returns as aforesaid, shall be allowed five cents for every mile such person may travel, in going and returning, in the performance of any of the services aforesaid, to be audited and paid as other claims.

Electors, when to meet.

Duty.

Compensation of electors.

SEC. 5. *Be it further enacted,* That the electors shall meet at the seat of government, on the first Wednesday in December next ensuing their appointment, and shall then and there give their votes for president and vice-president, and shall do and perform all the duties required of them by the act of congress in that case made and provided, and shall receive for their services the same compensation as the members of the general assembly; and the governor shall audit their accounts, and grant them certificates for the amount ascertained to be due, which certificate shall be a sufficient voucher to authorize the auditor of public accounts to draw his warrant for the amount, which shall be paid out of the state treasury as other demands.

Vacancies, how supplied.

SEC. 6. *Be it further enacted,* That if the electors appointed under this act, or any of them, fail to attend at the seat of government by the hour of two o'clock in the afternoon of the day pointed out in this act for electing a president and vice-president of the United States, then and in that case the senate and house of representatives shall proceed immediately, by a joint vote of the two houses, to fill such vacancy or vacancies. All laws consistent with the provisions of this act are hereby repealed.

This act shall take effect and be in force from and after the passage thereof.

[*Approved, December* 18, 1824.]

ESCHEATS.

4 July, 1825.

AN ACT concerning Escheats.

What property shall escheat to the state.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That if any person shall die siezed of any real or personal estate without any devise thereof, and leaving no heirs or representatives capable of inheriting the same, or the devisees thereof be incapable of holding the same, and in all cases where there is no owner of real estate capable of holding the same, such estate shall escheat to and vest in the state.

Administrators to account to the state.

SEC. 2. *Be it further enacted,* That in all cases where administration hath been or shall be granted, and there are no known heirs or legal representatives of the intestate, or no person shall appear within three years next after the granting the letters of administration to claim the personal estate of such intestate as next of kin, it shall be the duty of the administrator, in the settlement of his accounts with the proper court, to account for all moneys which shall have or may come to his hands as administrator as aforesaid;* and if there be more than sufficient to pay the debts of the deceased and the expenses of administration according to law, it shall be the duty of such court, on each settlement, to ascertain the amount so remaining in the hands of such administrator, and grant duplicate certificates thereof,—one of which shall be transmitted to the attorney-general or circuit attorney prosecuting for the district, and the other to the auditor of public accounts, who shall charge such administrator with the amount. And it shall be the duty of such administrator to pay such balance into the state treasury, within ninety days after such settlement; and if he shall so pay the same, the treasurer shall grant him duplicate receipts therefor, one of which he shall deliver to the auditor of public accounts, who shall grant him a certificate thereof, and credit him with the amount so paid into the treasury, and shall charge the treasurer therewith,—and the court having the settlement of the accounts of such administrator shall, on the production of the auditor's certificate to them, credit such administrator with the amount; but if payment shall not be made as aforesaid, it shall be the duty of the attorney-general or circuit attorney prosecuting for the district, to move the said court to enter judgment against such administrator and his securities, or either of them, for such balance, and five per centum per month thereon, giving to such administrator and his securities ten days previous notice of such intended motion, and the said court shall hear and determine the same in a summary manner. And if such administrator or his securities shall not produce the auditor's certificate as aforesaid, showing full payment of the balance into the state treasury, such court shall render a judgment against such administrator and his securities, or such of them as shall receive notice as aforesaid, for the amount due, and five per centum per month thereon from the time the balance was first ascertained until the rendition of the judgment and the costs of the proceeding, and issue execution therefor; and if the auditor's certificate be produced, such administrator and his securities may nevertheless be adjudged to pay the costs of the proceeding, at the discretion of the court,—but shall in no case recover costs. And the like proceedings shall be had at each subsequent settlement.

*See title Administration, ante p. 92 to 125.

Settle with auditor of public accounts, and make payment.

On settlement with court, payments to be credited.

Failure to make payment, proceedings.

Costs.

Administrators appointed more than 3 years, to make immediate settlement.

SEC. 3. *Be it further enacted*, That in all cases of administration, granted more than three years before the taking effect of this act, where there are no known heirs or legal representatives, or no person hath appeared to claim the estate as next of kin, the administrator shall immediately make a settlement of his accounts with the court having jurisdiction of such settlement in manner aforesaid, and pay the balance which hath accrued to the state or the late territory of Missouri into the state treasury. And the court in making the settlement, and the administrator in making payment, and all others concerned, shall proceed as prescribed in the preceding section; and in case of default of payment as aforesaid, the same proceedings shall be had, and with the like effect, as in the preceding section is provided.

Atto. general and circuit attornies, to enforce settlements.

SEC. 4. *Be it further enacted*, That in all cases of administration where there are no known heirs, or legal representatives, and in all cases as aforesaid, it shall be the duty of the attorney general, or the circuit attorney of the district within which the courts are held, wherein the accounts of any such administrator are required by law to be settled, to examine the proceedings of such administrators, to cause the necessary process to be issued to compel the prompt settlement of his accounts, to attend such settlements when necessary on behalf of the state, to contest any item which to himself shall appear unjust or unreasonable, and in case of waste or mismanagement of the estate, or other mal-administration, to cause proper suits and proceedings to be instituted and prosecuted: he shall have power, and is hereby authorised and required, for and in behalf of the state, to do all things touching such administration which might or could be done, by any sole heir, and especially to preserve the real estate from being improperly or unnecessarily sold, wasted, or damaged; and it is hereby made his special duty to examine the records of the several courts, having the settlement of administrators accounts, and cause the necessary process to be issued requiring all administrators as aforesaid, whose letters have been granted more than three years, before taking effect of this act, to appear and make settlement as herein before required, and shall in default of any such settlements being made, bring suits against the administrator in default, and his securities, without delay.

Powers and duties of atto. general, &c. touching estate.

Proceedings to be instituted and prosecuted by atto. general against real estate.

SEC. 5. *Be it further enacted*, That when the attorney general or any circuit attorney shall be informed, or have reason to believe, that any real estate within his district hath escheated to the state, by reason that any person hath died seized thereof, without devising the same, and leaving no heir capable of inheriting the same, or by reason of the incapacity of the devisee to hold the same, and such estate shall not have been sold according to law within five years after the death of the person last seized, for the payment of the debts of the deceased; or when he shall be informed, or has cause to believe, that any such estate within his district hath otherwise escheated to the state, it shall be his duty to file an information in behalf of the state, in the circuit court of the county in which such estate is situate, setting forth a description of the estate, the name of the person last lawfully seized, the names terre-tenants and persons claiming such estate, if known, and the facts and circumstances, in consequence of which such estate is claimed to have escheated, and alleging that by reason thereof, the state of Missouri hath right, by law, to such estate; whereupon such court shall award and issue a *scire facias* against such person or persons, bodies politic or corporate, as shall be alleged in such information, to hold, possess or claim such estate, requiring them to appear and shew cause why such estate should not be vested in the state, at the next term of such court; which *scire facias* shall be served at least fifteen days before the return day thereof; and the court shall moreover make an order setting forth briefly the contents of such information, and requiring all persons interested in the estate, to appear and shew cause, if any they have, at the next term of the said court, why the same should not be vested in the state; which order shall be published, for six weeks successively, in some newspaper printed in this state, and in or nearest to the county in which such proceeding is had, the last insertion to be at least two weeks before the commencement of the term at which the parties are required to appear.

Information to be filed.

Scire facias to issue.

Service and publication.

Parties interested may appear and plead.

SEC. 6. *Be it further enacted*, That all persons, bodies politic and corporate, named in such information as terre-tenants, or claimants to the estate, may appear and plead to such proceeding, and may traverse or deny the facts stated in the information, the title of the state to the lands and tenements therein mentioned, at any time on or before the third day of the return term of such *scire facias;* and any other person claiming an interest in such estate, may appear and be made a defendant, and plead as aforesaid, by motion for that purpose in open court, within the time allowed for pleading as aforesaid; and if no person shall appear and plead, or appearing, shall refuse to plead within the time, then judgment shall be rendered, that the state be seized of the lands and tenements in such information claimed; but if any person shall appear and deny the title set up by the state, or traverse any material facts in the

Judgment on default of appearance, &c.

On appearance, & issue joined.

information, an issue or issues shall be made up, and tried as other issues of fact, and a survey may be ordered and entered as in other actions, when the title or boundaries of lands are drawn in question; and if after the issues are tried, it shall appear from the facts found or admitted, that the state hath good ~~title to the lands~~ and tenements in the information mentioned, or any part thereof, judgment shall be rendered that the state be seized thereof and recover costs of suit against the defendant, but if it shall appear that the state hath no title in such estate, and that the defendant hath good title thereto, the defendant shall recover his costs of suit, to be taxed and certified by the clerk; and the auditor of public accounts shall, on such certificate being filed in his office, issue a warrant therefor on the state treasury, which shall be paid as other demands on the treasury; but no defendant shall be entitled to recover costs, unless the title to such estate shall appear to the court, in the facts found, to be in him.

Form and effect of judgt. of seizen and writ.

SEC. 7. *Be it further enacted*, That when any judgment shall be rendered, that the state be seized of any lands, tenements, or hereditaments, such judgment shall contain a description of such estate, and shall be effectual for vesting the title in the state; and a writ shall be issued directed to the sheriff of the same county, commanding him to seize and take the lands, tenements and hereditaments, so vested in the state, into his hands, and upon the return of such writ of seizure the attorney general, or circuit attorney, prosecuting such information, shall cause the record and process to be exemplified under the seal of the court, and deposit the same in the office of the auditor of public accounts, and shall also cause a transcript of the judgment to be recorded in the office of the recorder of the county in which the lands lie, and such judgment shall preclude all parties and privies thereto, their heirs and assigns, so long as such judgment shall remain in force.

Transcript of record to be deposited with auditor of public accounts.

Appeal and writ of error allowed.

SEC. 8. *Be it further enacted*, That any party who shall have appeared to any proceeding as aforesaid, and the attorney general, or circuit attorney on behalf of the state, shall respectively have the same right to prosecute an appeal, or writ of error, upon any judgment as aforesaid, as parties in other cases.

Accounts to be kept by auditor.

SEC. 9. *Be it further enacted*, That the auditor of public accounts shall keep just and true accounts of all moneys paid into the treasury, and of all lands vested in the state as aforesaid; and if any person shall appear, within ten years after the death of the intestate, and claim any money paid into the treasury as aforesaid, as heir or legal representative, such person may file a petition to the circuit

Heir appearing, proceedings to establish his claim.

Decree for money.

Proceedings to recover lands.

Decree.

Limitation.

Saving to infants, &c.

State may cause lands to be sold.

court, as a court of chancery, for the county in which the seat of government may be, stating the nature of his claim, and praying that such money may be paid to him, a copy of which petition shall be served upon the attorney, who shall put in an answer to the same, and the court shall thereupon examine the said claim, and the allegations and proofs, and if they shall find, that such person is entitled to any money so paid into the treasury, such court shall by an order, direct the auditor of the public accounts to issue his warrant on the treasurer for the payment of the same, but without interest or costs; a copy of which order, under the seal of the court, shall be a sufficient voucher for the issuing of such warrant. And if any person shall appear and claim any lands vested in the state as aforesaid, within five years after the judgment was rendered, it shall be lawful for such person, (other than such as were served with a *scire facias* or appeared to the proceeding, their heirs or assigns,) to file his petition in the circuit court (as a court of chancery,) of the county in which the lands claimed lie, setting forth the nature of his claim and praying that the said lands may be relinquished to him, a copy of which petition shall be served on the attorney general, or circuit attorney of the district, who shall put in an answer, and the court shall thereupon examine the said claim, and the allegations and proofs; and if it shall appear that such person is entitled to the lands claimed, the court shall decree accordingly, which shall be effectual for divesting the interest of the state, in or to the lands, but no costs shall be adjudged against the state; and all persons who shall fail to appear and file their petitions within the times limited aforesaid, shall be forever barred; saving however to infants, married women, and persons of unsound mind, or persons beyond the limits of the United States, the right to appear and file their petitions as aforesaid, at any time within five years after their respective disabilities are removed: *Provided, however,* That the general assembly may cause such lands to be sold at any time after seizure, in such manner as may be provided by law, in which case the claimants shall be entitled to the proceeds in lieu of the lands, upon obtaining a decree or order as aforesaid.

This act shall take effect and be in force from and after the fourth day of July next.

[*Approved, December* 18, 1824.]

EVIDENCE.

17 Jan. 1825.

AN ACT declaring what shall be Evidence in certain cases.

Private acts printed by authority, evidence.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That the printed statute books of this state, printed under the authority of this state, shall be evidence of the private acts therein contained.

Laws of sister states, printed by authority.

Sec. 2. *Be it further enacted*, That the printed statute books of sister states, purporting to be printed under the authority of those states, shall be evidence of the legislative acts of those states respectively.

Certified copies of proceedings before J P.

Sec. 3. *Be it further enacted*, That certified copies of proceedings before justices of the peace, certified by the justices before whom the proceeding is had, shall be received as evidence of such proceedings.*

Certified copies of plats, entries, &c. by surveyor general.

Sec. 4. *Be it further enacted*, That certified copies of plats, surveys, entries, New-Madrid certificates and locations, and of all other papers which are by law required to be deposited in the office of the surveyor of the lands of the United States in the state of Missouri, duly certified by such surveyor, shall be received as evidence in the courts of this state.

Copies of confirmations.

Copies of N. Madrid certificates.

Transcript of books of the recorder.

Sec. 5. *Be it further enacted*, That a certified copy of any confirmation had before the board of commissioners for the adjustment of land claims within this state, or before the recorder of land titles, duly certified by said recorder, or by the person who by law shall have the custody of the books and papers containing such confirmation; certified copies of certificates granted by the said recorder under the act of congress for the relief of the sufferers by earthquakes in the county of New-Madrid, and of all other books and papers which by law are required to be deposited in the office of the said recorder, duly certified as aforesaid, shall be received in evidence in the several courts in this state.

Surveyor & recorder's fees.

Sec. 6. *Be it further enacted*, That the said surveyor and recorder shall be entitled to twelve and a half cents for every hundred words, for all copies by them respectively given under this act, and the further sum of twenty-five cents for each certificate.

[*Approved, January* 17, 1825.]

EXECUTIONS.

4 July, 1825.

AN ACT to regulate Executions.

Execution to issue against

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That it shall be lawful for the party in whose favor any judgment is or shall be rendered, or any order or decree made, and execution thereof awarded, by any court of record, to have an execution against the body, the goods and chattels, lands and tenements, of the party against whom such judgment, order, or decree, is or shall be rendered, or, made; but no execution shall be issued against the body, or goods and chattels, lands and tenements, of any heir, executor or administrator, unless he shall have made his estate liable thereto by false pleading or otherwise; and it shall be the duty of the clerk of every court of record, to issue writs of execution, according to the judgment, order or decree of the court.

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*See Justices Courts, sec 9.

body, lands and goods.

But not agt. the body of ex'r. or adm'r unless.

Clk to issue in conformity with judgt.

Sec. 2. *Be it further enacted*, That writs of execution shall be issued by the clerks of the several courts of record in this state, in the following form—

Form of writ prescribed.

THE STATE OF MISSOURI,

To the Sheriff of the county of ———, *Greeting*:

Whereas, A. B. at our ——— court, before our judge, hath recovered against C. D. the sum ———, for debt, (or damages, as the case may be) and also for the sum of ———, which to the said A. B. were adjudged, for his damages, as well by reason of detaining the said debt, as for his costs in that suit expended, as appears to us, of record. These are therefore to command you, that of the goods and chattels, lands and tenements, of the said C. D. you cause to be made the aforesaid debt, (or damages alone.) And for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you that you take C. D. if he be found in ——— county, and him safely keep, so that you have his body before the said Judge on the said —— day of ———, to satisfy the said A. B. of the aforesaid debt, (or damages) and costs, and that you certify to our said Judge, how you execute this writ, and have you then there this writ.

Witness, E. F. Clerk of the said court, at ———, this —— day of ———.

E. F. *Clerk*,*

But when such execution shall be issued against any person or persons, as heirs, devisees, executors or administrators of any person deceased, (unless they shall have made their estate liable, by false pleading or otherwise) the sheriff, or other officer, to whom the same shall be directed, shall be commanded only that of the goods and chattels

Execution against heirs, executors,&c clause of capias to be omitted.

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*The costs of the prevailing party are to be taxed and endorsed on every execution, *(see title "Fees," sec. 27;)* and the clerk shall endorse on the writ the fees due to each officer, distinctly, *(see "Fees," sec. 28.)*

which were of the ancestor, testator or intestate, at the time of his death, he cause to be made, the debt, damages, and costs; and if sufficient goods and chattels cannot be found in his county, then, that of the lands and tenements which were of the ancestor, testator or intestate, at the time of his death, he cause to be made, the debt, damages, and costs, or sum of money in such execution specified.

Writ, to what county to be directed.

SEC. 3. *Be it further enacted*, That all executions which shall be issued upon any judgment, order, or decree, rendered in the supreme court, may be directed to and executed in any county of this state;* and all executions, issued upon judgments, orders, or decrees, rendered in any other court of record, may be directed to, and executed in the county in which the trial was had, or the party charged resides, at the option of the party suing out such writ; and after one such writ be returned, not satisfied, or at any time, upon good cause shewn, such execution may be directed to, and executed in, any county in this state; and so on from time to time, until the whole of the debt, damages, and costs, recovered, be paid.

Amount of debt, damages and costs to be endorsed.

Abstract to be kept by clerks.

Index.

SEC. 4. *Be it further enacted*, That it shall be the duty of the clerks of each court of record, to endorse upon every execution by him issued, the debt and damages, and costs, to be recovered, before the delivery of such execution to be executed; and to keep in his office, a well bound book, and enter therein, an abstract of all executions issued out of his office, shewing the date, names of the parties, amount of the debt, damages, and costs, to what officer directed, the return, if any, and a reference to the book and page wherein the judgment, order, or decree, whereon such execution issued, is entered; and every such clerk shall moreover keep a regular index to such abstract of executions, arranged alphabetically both by the names of the plaintiffs and defendants therein.

Body of deft. in custody, may be discharged on payment of money or delivery of property.

SEC. 5. *Be it further enacted*, That if any person, who shall be taken on any execution, or committed thereon to prison, shall pay to the sheriff or other proper officer, the full amount of moneys in such execution specified, and costs, or if he shall pay a part thereof, and surrender and deliver to such officer, property liable to execution, sufficient to satisfy the residue, or if he shall surrender and deliver to such officer, property liable to execution, sufficient to satisfy such execution, then such officer shall discharge him from custody, and dispose of the money and

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*Party suing out execution from the supreme court, shall cause the same to be returned without fee, unless the court, for special reasons, order the personal attendance of the sheriff, (see "*Fees*," sec. 13.)

property, so by him received, in like manner, and with the same effect, as if such execution had originally been against the goods and chattels, lands and tenements, of such person; and if by the sale of property so surrendered, there shall not be sufficient to satisfy such execution, the person at whose suit such writ was sued out, may sue forth a new writ of execution, on the judgment, order, or decree, as if the body of such person had never been taken.

May be retaken, if property not sufficient.

SEC. 6. *Be it further enacted*, That if any person taken in execution or committed to prison thereon, shall escape by any means whatever, the person at whose suit such prisoner was taken or charged in execution, at the time of his or her escape, may re-take such prisoner by a new execution on the judgment, order or decree, as if the body of such prisoner had never been taken in execution.

Deft. escaping, may be re-taken on new writ.

SEC. 7. *Be it further enacted*, That the spinning wheels and cards, one loom and apparatus necessary for manufacturing cloth in any private family, all the spun yarn and thread and cloth manufactured for family use, any quantity of flax and wool not exceeding twenty ponnds of each, all wearing apparel of the family, two beds with usual bedding, and such other household and kitchen furniture, not exceeding the value of twenty five dollars, as may be necessary for the family, agreeably to an inventory thereof, to be returned on oath with the execution, by the officer whose duty it may be to levy the same; and the wearing apparel of all persons whatever, the necessary tools and implements of trade of any mechanic, while carrying on his trade, all the arms and military equipments required by law to be kept, shall be exempted from and not liable to be seized and sold, under or by virtue of any execution; *Provided*, That as to any property herein enumerated which shall not heretofore have been exempt from execution, this section shall not be construed to effect any contract made before the passage thereof.

What property exempt from execution.

Officer to return inventory.

Wearing apparel, tools, arms, &c. exempt.

Proviso.

SEC. 8. *Be it further enacted*, That all and singular the goods and chattels (not herein before exempted,) the slaves and the rights and shares in the stock of any bank, insurance company, turnpike company or other corporation, belonging to any person against whom an execution shall be issued upon any judgment, order or decree, of any court of record, at the time such writ shall be delivered to the sheriff, or other officer, to be executed, or at any time afterwards; and all and singular the lands, tenements, and real estate, whereof such person or any person to his use, was seized in law or equity, on the day of rendition of the judgment, order or decree, whereon execution issued, or any time afterwards, shall be liable to be seized and

What property liable; slaves, goods and chattels, stock, &c.

From what time.

Real estate.

From date of judgment.

sold upon any such judgment, order or decree, and execution as aforesaid.

From what time property, real and personal, is bound.

Sec. 9. *Be it further enacted,* That no writ of execution, shall bind the property in any slaves, goods, or chattels, or the rights or shares, in any stock as aforesaid, or any lands and tenements, or other real estate, to which the lien of the judgment, order, or decree, does not extend, or has been determined, but from the time that such writ shall be delivered to the sheriff or other officer in the proper county to be executed; and the several sheriffs and other officers and their deputies, shall upon the receipt of such writ, without fee for doing the same, endorse thereon, the day of the month and year when they received the same, and if two or more such writs shall be delivered on the same day, against the same person, they shall have equal rank and be executed accordingly.

Time of receiving writ to be endorsed.

Bank shares and other stock, how levied on.

Sec. 10. *Be it further enacted,* That when any execution shall be issued against any person, being the owner of any shares, or stock in any bank, insurance company, turnpike company, or other corporation, it shall be the duty of the cashier, secretary, or chief clerk of such bank, insurance company, turnpike company, or other corporation, upon the request of the sheriff or other officer having such execution, to furnish him with a certificate, under his hand, stating the number of rights or shares, the defendant holds in the stock of such bank, company or corporation, with the incumbrances thereon, if any there be; and the sheriff or other officer upon obtaining such information as aforesaid, or in any other manner, may make a levy of such execution on such rights and shares, by leaving a true and attested copy of such writ with the cashier, secretary, or chief clerk, and if there be none there, with some other officer of such bank, company or corporation, with an attested certificate, by the officer making the levy, that he levies upon and takes such rights and shares to satisfy such execution.

Defendant may elect what property shall be first levied on.

Duty of shff.

Sec. 11. *Be it further enacted,* That any person against whom any writ of execution shall be issued, may elect what property, real or personal, shall be sold to satisfy the same. And if he shall give to the sheriff or other officer a list of the property so elected, sufficient to satisfy such execution, such sheriff or other officer shall levy upon such property, and no other, if it be sufficient in his opinion to satisfy such execution; and if not, then upon such additional property as shall be sufficient.

Title to property levied on, disputed, how tried.

Sec. 12. *Be it further enacted,* That when any personal property, or any shares in any bank, company or corporation, or other effects, shall be seized by virtue of any execution, and any person other than the person against whom such execution issued shall claim such property or any part thereof, and shall give notice thereof in writing of such claim to the sheriff or other officer levying such writ, such sheriff or other officer may summon a jury to determine the right of property, giving ten days previous notice of the time and place of holding the inquest to the plaintiff in the execution, or his attorney, and shall, at the request of either party, or at his own instance, summon witnesses, and may compel them to attend and give testimony, and may administer the necessary oaths to the jurors and witnesses; and the verdict of such jury, being rendered in writing and signed by them, shall be a full indemnity to such officer proceeding according thereto. And the sheriff and witnesses shall be allowed the like fees as for similar services in the circuit court; and if the verdict shall be against the claimant, he shall pay all costs attending the inquest, and if found for him, the plaintiff in the execution shall pay them: and the sheriff may levy all costs upon the goods and chattels of the party made liable to pay them, as on execution.

Notice of claim.

Jury to be summoned.

Witnesses.

Verdict.

Fees of witnesses and sheriff.

Costs.

Sec. 23. *Be it further enacted*, That in all cases where execution shall be levied upon any real estate, the sheriff or other officer levying the same shall divide such property (if susceptible of division) and sell only so much thereof as will be sufficient to satisfy such execution, unless the defendant in the execution shall desire the whole of any tract or lot of land to be sold together, in which case it shall be sold accordingly.

Real property levied on, to be divided if practicable, and not more sold than necessary.

Sec. 24. *Be it further enacted*, That the person whose goods, chattels, lands and tenements are taken in execution, may elect what part thereof shall be first sold; and if he shall deliver to the sheriff or other officer having charge thereof, a statement in writing of such election, five days at least before the day appointed for the sale thereof, stating specifically what goods, chattels or lands and tenements he desires to be first sold, and so on until the execution is satisfied, the sheriff or other officer shall proceed according to such election until sufficient moneys shall be made to satisfy the amount in the execution specified and costs.

Deft. may elect what property shall be first sold; proceedings.

Sec. 25. *Be it further enacted*, That no goods and chattels, or other personal effects seized and taken by virtue of any execution, shall be sold, until the sheriff or other officer authorized to make the sale shall have given at least ten days notice of the time and place of sale and the property to be sold, by at least three advertisements put up in the most public places in the township in which the sale is to be made, and one at the most public place in

Notice of the time and place of sales of personal property to be given

Proviso, as to constable. each of the other townships in the county: *Provided*, That constables be not required to put up notices in any other township except that in which the sale is to take place.

Sale of real estate, when and where. Sec. 16. *Be it further enacted*, That when lands and tenements shall be taken in execution by any sheriff or other officer, it shall be his duty to expose the same to sale at the court house door, on some day during the term of the circuit court of the county wherein they are situate, having previously given twenty days notice of the time and place of sale, and what lands and tenements are to be sold, and where they lie as near as may be, by at least six handbills signed by him and put up in the most public places in the different parts of the county, or by advertising the same in any newspaper printed in the county. Notice of sale.

Sale of property how conducted; within what hours. Sec. 17. *Be it further enacted*, That all property taken in execution by any sheriff or other officer as aforesaid, shall be exposed to sale on the day for which it is advertised, between the hours of nine in the forenoon and five of the afternoon, openly and publicly by auction, for ready money, and the highest bidder shall be the purchaser.* And if any purchaser shall neglect or refuse to pay the amount bid by him for any property struck off to him, the sheriff or other officer making the sale may again sell such property, at any time, to the highest bidder; and if any loss shall be occasioned thereby, the sheriff or other officer may and shall recover the amount of such loss, with costs, by motion made before any court, or before any justice of the peace if the sum shall not exceed his jurisdiction. Any such court or justice shall proceed in a summary manner, and give judgment and award execution thereof forthwith; and the same proceedings shall be had against any subsequent purchaser who shall neglect or refuse to pay as aforesaid: and the sheriff or other officer may, in his discretion, for ever thereafter refuse the bid of any purchaser so refusing to pay as aforesaid. Purchaser refusing to pay, property to be resold. Deficiency (if any) how recovered.

Officers not to purchase property, directly or indirectly. Sec. 18. *Be it further enacted*, That it shall not be lawful for any sheriff or other officer, to whom any writ of execution shall be directed, or any of their deputies, or any person for them or either of them, to purchase any goods or chattels, lands or tenements, or other effects, at any sale by virtue of such execution; and all purchases so made by them or any of them, or for the use of them or any of them, shall be void.

Personal property to Sec. 19. *Be it further enacted*, That when any purchaser of any goods or chattels shall pay the purchase money,

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* The officer selling real estate, under any judgment or decree, shall state that the same is sold subject to the lien of all prior judgments and decrees. *See post. tit. Judgments and Decrees, sec.* 2.

Be delivered to purchaser, and a bill of sale thereof given, if required.

the sheriff or other officer selling the same shall deliver him such property, and shall, moreover, if thereto desired, execute an instrument of writing, drawn and exhibited to him at the expense of such purchaser, testifying the sale and payment of the purchase money, and conveying to such purchaser all the right, title and interest which the debtor had in and to the property sold, on the day the execution was delivered (to be particularly specified.) And when any rights or shares of stock in any bank, company or corporation shall be sold, the sheriff or other officer making such sale shall execute an instrument of writing, to be drawn at the expense of the purchaser, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares; and shall also leave with the cashier, secretary or chief clerk, or if there be none, then with any other officer of such bank, company or corporation, a copy of the execution and of his return thereon, and the purchaser shall thereupon be entitled to all dividends and stock, and to the same privileges as a member of such company or corporation, as such debtor was entitled to.

Bill of sale of bank stock, &c. to be made.

Deed to be executed for real estate.

Recitals.

Interest to be conveyed

Effect of deed.

Sec. 20. *Be it further enacted*, That the sheriff or other officer, who by virtue of any execution, shall sell any lands, tenements, hereditaments, and real estate, or any part thereof, shall make to the purchaser thereof a deed, sealed with his private seal, reciting the execution, advertisement, purchase, and consideration; and conveying to such purchaser, his heirs and assigns, forever, all the right, title, claim, and interest, which such debtor had, in and to such property, on the day of the rendition of the judgment, order or decree, or at any time afterwards: such deed shall be effectual for passing and vesting in the purchaser, as good and perfect an estate to the premises mentioned, as the person against whom such writ of execution was issued, was seized of or entitled to, at the time the judgment, order or decree, upon which such writ issued, was rendered, or at any time afterwards, to all intents and purposes, as if such person had sold the same and executed such deed therefor himself; and subject to the same liens and incumbrances (the widow's dower excepted) that such estate was subject to at the day of rendering such judgment or decree.*

Deed to be acknowledged before the court.

Sec. 21. *Be it further enacted*, That every sheriff or other officer executing any deed for lands, tenements, or

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*A sale of lands under a junior judgment, passes the title subject to the lien of prior judgments, *(see post. title "Judgments and Decrees,")* hereditaments, sold by virtue of any execution, shall acknowledge the execution thereof, before the circuit court of the county in which the estate therein conveyed is situate; but if he die, or leave the state, resign, be removed from office, or otherwise disqualified from acting, before making such acknowledgment, such deed may be proved before such court, as other deeds; and the clerks of such court, shall endorse upon such deed, a certificate of such acknowledgment or proof, under the seal of the court, and shall make an entry of such acknowledgment or proof, with the names of the parties to the suit, and a description of the property thereby conveyed; and every deed so executed, acknowledged, or proved, shall be recorded as other conveyances of lands; and thereafter such deed, or copy thereof, or of the record certified by the recorder, shall be received as evidence, in any court in this state, without further proof of the execution thereof.

In case of death, resignation, &c. deed may be proved.

Certificate of acknowledgment or proof.

Deed to be recorded, and copy, evidence.

Term of service of officer expiring after levy, he shall execute the writ, &c.

SEC. 22. *Be it further enacted*, That when any sheriff or other officer shall have levied upon any goods and chattels, lands and tenements, or other effects, by virtue of any execution, and the term of service of such officer shall expire and be determined before or after the sale thereof, and before the purchaser shall have obtained a deed or conveyance therefor duly executed, such officer shall nevertheless have power to do and perform all things in relation to such execution, and the sale of such property, and in the making, executing, and acknowledging a deed or conveyance to the purchaser in the same manner, and with the like effect, to all intents and purposes, as if his term of service had not expired, and he and his securities, shall be subject to the like penalties, actions, proceedings, and judgments for neglect, misconduct or failure therein, as if he still continued in office.

Proceedings in case of death, resignation, or removal from office, after levy and before sale.

SEC. 23. *Be it further enacted*, That when any sheriff or other officer, shall die or be removed from office or otherwise disqualified from acting, after having taken in execution any goods and chattels, lands and tenements, or effects, and before sale thereof, the sheriff or coroner then in office, shall proceed thereon, and do and perform all things remaining to be done and performed in relation to such execution, and the sale of such property, and in the making and executing deeds and conveyances therefor, in the same manner, and to the like effect, to all intents and purposes as the officer so deceased, removed from office or disqualified; and where any such sheriff or other officer shall die, be removed from office or disqualified as aforesaid, after the sale of any such property, and before executing a conveyance therefor, the purchaser may petition the court

If after sale, proceedings.

out of which the execution issued, stating the facts, and if he shall satisfy the court that the purchase money has been paid, the court shall order the sheriff then in office, to execute and acknowledge a deed to the purchaser reciting the facts, which deed shall be executed and acknowledged accordingly, and shall have the same effect, to all intents and purposes, as if made by the sheriff or other officer so deceased, removed from office or disqualified. And in all cases arising under this section, the court out of which the execution issued, shall settle, adjust, and apportion the fees and commissions arising on such execution, between such preceding sheriff, or officer, his executors or administrators, and such succeeding officer, having regard to the services performed by each.

Fees of officers to be apportioned.

SEC. 24. *Be it further enacted*, That if any sheriff or other proper officer, to whom any writ of execution shall be delivered to be executed, shall neglect or refuse to execute or levy the same according to law, when he might or could have done so; or shall take in execution any property, by virtue of any writ of execution, or any such property be delivered to him by any person against whom a writ of execution is issued, and such sheriff or other officer shall neglect, or refuse to make sale of the property so taken, or delivered according to law, or if any such officer shall not return any such writ according to law, or shall make a false return thereon; or after having taken the defendant's body in execution, shall permit him to escape, and shall not have his body according to the command of the writ, then and in any of the cases aforesaid, such sheriff or other officer, shall be liable and bound to pay the whole amount of monies in such writ specified; or thereon endorsed and directed to be levied; and if any such sheriff or other officer, shall not, on the return of such writ, or at the time when the same ought to be returned, have the moneys which he shall become liable to pay as aforesaid, before the court, and pay the same according to the exigency of the writ, any person aggrieved thereby, may have his action against such officer, and his securities upon his official bond, or may have his remedy by action on the case against such sheriff or other officer in default.

Officer neglecting or refusing to levy

Or to make sale after levy.

Or failing to make return, or making false return.

Or permitting escape.

Liable for amount of execution.

Remedy of plaintiff.

SEC. 25. *Be it further enacted*, That if any sheriff, or other officer, shall sell any property, under or by virtue of any execution, whether he receive payment therefor or not, or shall make by any means, the moneys in any execution specified, or thereon endorsed, and directed to be levied, or any part thereof, and shall not have the amount of such sales, or the moneys so made, before the court, and pay over the same according to law, and the exigency of the

Officer making sale, or making moneys, and not paying over.

Liable for the amount, with interest, and 5 per ct. per month damages. How recovered, by action, or By motion. Execution on such judgment to be levied in 15 days.

writ;* he shall be liable to pay the whole amount of such sales, or moneys by him made, to the persons entitled thereto, with lawful interest thereon, and damages in addition thereto at the rate of five per centum per month, to be computed from the time when the execution is returnable until the whole shall be paid; to be recovered by action of debt, against such officer and his securities, on his official bond, or by action on the case against such officer; or the party aggrieved, may proceed against such officer by motion to the court, before which such writ is returnable, in a summary way, two days previous notice being given of such intended motion; and the court shall render judgment for the amount which ought to have been paid, with interest and damages as aforesaid, and award execution thereof forthwith; and it shall be the duty of every officer to whom any execution shall be delivered, issuing upon any judgment recovered according to the provisions of this section, to execute the same within fifteen days after it shall be delivered to him, and shall be subject to the like liabilities and penalties for any default therein as on other executions.

Writ, improvidently issued, may be stayed on application to a judge, by petition. Recognizance to be entered into. Property to continue bound.

Sec. 26. *Be it further enacted,* That if any person against whom any writ of execution shall be issued, shall apply to any judge of the court out of which the execution or order of sale may have been issued, by petition, verified by oath or affirmation, setting forth good cause why such execution ought to be stayed, set aside or quashed, reasonable notice of such intended application being previously given to the opposite party, his attorney of record or agent, such judge shall thereupon hear the complaint,—and if it shall appear to him that such execution ought to be stayed, set aside or quashed, and the petitioner shall enter into recognizance, with sufficient securities, in such sum as shall be reasonable, to be taken and approved by such judge, conditioned that if such application shall finally be determined against such petitioner by the court having competent jurisdiction, he will pay the debt, damages and costs to be recovered by such execution or order of sale, or surrender in execution all his property liable to be siezed and taken or sold by virtue of such writ or order of sale, or that the securities will do it for him, then such judge shall make an order for the stay of the execution or order of sale as aforesaid; but all the property, real and personal, bound by such execution or order of sale, shall remain bound as if no such stay had been granted, and every

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*All moneys collected by sheriffs shall be paid to the plaintiff or his order, or his attorney of record, (*see title "Fees," proviso to sec. 13.*)

Return to be made by judge.

order so made shall be obeyed accordingly. And it shall be the duty of such judge to return such petition and proceedings thereon, duly certified, to the court out of which the execution was issued, or order of sale is made returnable; and the clerk of such courts respectively shall enter the same upon their motion docket,—and the courts shall hear and determine the same in a summary way according to right and justice, and may award a perpetual stay of such execution or order of sale, or may order the execution or order of sale to be enforced.

Proceedings of court.

This act shall take effect and be in force from and after the fourth day of July next.

[*Approved, February* 21, 1825.]

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FEES.

AN ACT to regulate the Fees of the several officers of this state. 1March,1825

Officers not to exact greater fees than allowed by this act.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That no officer, or other person, whose fees are herein after ascertained, shall at any time hereafter exact, ask, demand, or receive, for his services, any other or greater fee than is herein after prescribed.

Attorney general and circuit attornies.

Sec. 2. *Be it further enacted*, That the attorney general, and circuit attornies, respectively, shall be entitled to the following fees for their services, to wit:

For every judgment obtained upon plaint or information, *four dollars*,	$4 00
For every conviction upon indictment or presentment for a misdemeanor, and in every case where the punishment is by fine only, *four dollars*,	4 00
For every conviction in any case where an offence punishable by fine and imprisonment, *four dollars*,	4 00
For every conviction in any case punishable by stripes, pillory or hard labor (except rape, arson, burglary, robbery, forgery or counterfeiting) *eight dollars*,	8 00
For every conviction for homicide other than capital, or for rape, arson, burglary, robbery, forgery or counterfeiting, *ten dollars*,	10 00
For every conviction in a capital case, *twenty dollars*,	20 00

In civil cases

No fees allowed if indictment held bad.

For his services in all actions which it is or shall be made his duty officially to prosecute or defend, the like fees as are or may be allowed by law to attorneys and solicitors for like services: *Provided*, That if any indictment in any criminal case or any plaint or information shall be quashed or held bad on demurrer, or any judgment thereon be arrested by reason of the insufficiency of such indictment, plaint or information, no fees shall be allowed to the attorney-general or circuit-attorney: *Provided also*, That none of the above fees be paid by the state or any county.

Attornies & solicitors.

SEC. 3. *Be it further enacted*, That attornies at law and solicitors in chancery shall be entitled to charge for their services the following fees, to wit:

For drawing and filing declaration, pleas and pleadings for either party, of every kind or nature whatever, in any cause at law, and prosecuting the same to final judgment, *five dollars*,	5 00
For instituting suit and prosecuting the same to final judgment, by summons and petition, *two dollars and fifty cents*,	2 50
For drawing and filing petitions, bills or answers in chancery, obtaining a *ne exeat*, obtaining or dissolving injunctions, trial of issue or issues of fact before a jury in chancery causes, obtaining all final decrees, *ten dollars*,	10 00

*See post. this head, sec 25.

To be taxed in the bill of costs against the unsuccessful party, as other costs.*

Clerks of county courts.

SEC. 4. *Be it further enacted*, That the clerks of the tribunals which now are, or hereafter may be established for the transaction of county business, shall be entitled to charge and receive for their services the following fees:

For entering every order for erecting or repairing any public bridges, *twelve and a half cents*,	12½
For making out and issuing certificates of the appointment of any commissioners for erecting or repairing any public bridge, *twenty-five cents*,	25
For filing the bond of a contractor for erecting or repairing a bridge, *six and a fourth cents*,	6¼
For reading and filing every petition, and recording the order made thereon, (to be paid by the petitioners) *fifty cents*,	50
For copying the petitions, order, plats and survey of roads, and all other records appertaining thereto, for every hundred words (to be paid by the petitioners) *ten cents*,	10
For issuing each certificate of the appointment of a commissioner of the roads, *twenty-five cents*,	25
For reading, filing and entering the complaint or application of persons objecting to a road (to be paid by the complainants) *twenty-five cents*,	25
For issuing a precept for an inquiry of damages in	

Clerks of county courts.

the case of roads (to be paid by the complainants) *fifty cents*,	50
For reading and filing a return of such inquisition (to be paid by the complainants) *twelve and a half cents*,	12½
For entering every order to justices of the peace for laying out road districts, and issuing copies thereof, *thirty-seven and a half cents*,	37½
For entering the appointment of overseers of roads, and issuing a notification thereof, *twenty-five cents*,	25
For entering the appointment of constable, taking and filing his bond, and issuing a certificate of the appointment (to be paid by the person appointed,) *one dollar*,	1 00
For entering every order concerning the erecting or repairing any county building, *twenty-five cents*,	25
For entering the appointment of persons to superintend the erecting and repairing any county building, and issuing a certificate thereof, *thirty-seven and a half cents*,	37½
For reading, filing and entering each report, plan, bond, or other paper touching any county building, *thirty-seven and a half cents*,	37½
For entering every order for ascertaining a county line, and issuing a copy thereof, *twenty-five cents*,	25
For entering every order approving or disapproving any return of the survey of county lines, *twenty cents*,	20
For recording return of survey of county lines if approved, *twenty-five cents*,	25
For entering every appointment of judges of election, and issuing certificates thereof, for each township, *twenty-five cents*,	25
For entering every order fixing the places of holding elections in his county, *twelve and a half cents*,	12½
For entering every order for the support of any poor person, idiot or lunatic, *twelve and a half cents*,	12½
For reading, entering and recording proceedings in relation to any prison bounds, *ten cents* for every hundred words,	
For all services required by law to be performed by him, touching the incorporating any town (to be paid by the petitioners) *one dollar*,	1 00
For all services required to be performed by him in relation to the laying out any township or altering township lines, and certifying the same, *one dollar*,	1 00

Clerks of county courts.

For trying any weight or measure by the county standard, and sealing the same (to be paid by the applicant) *twenty-five cents,*		25
For entering the appointment of each assessor or collector, and issuing a certificate thereof under the seal of his office, *one dollar,*	1	00
For all services in taking, filing and safe keeping any collector's bond for state taxes (to be paid by the state,) *one dollar,*	1	00
For like services in relation to collector's bond for county taxes, to be paid by the county, *one dollar,*	1	00
For making out state tax list, for every hundred words, (to be paid by the state) *six and a fourth cents,*		6¼
For making out county tax list, for every hundred words, (to be paid by the county,) *six and a fourth cents,*		6¼
For issuing each license under the seal of his office, (to be paid by the applicant,) *one dollar,*	1	00
For taking, filing, and safe-keeping any bond not herein otherwise provided for, to be paid as aforesaid, *one dollar,*	1	00
For making settlement of any account with the county, *fifty cents,*		50
For entering every order for the payment of money out of the county treasury, (to be paid by the person in whose favor it is made,) *twelve and a half cents,*		12½
For all services attending the licensing a ferry, or tavern, not herein before mentioned, *one dollar,*	1	00
For issuing each writ, receiving, filing and docketing returns, *seventy five cents,*		75
For filing every paper not herein before specified, *six and a fourth cents,*		6¼
For administering each oath, *six and a fourth cents,*		6¼
For swearing and entering each jury, *fifty cents,*		50
For taking the verdict of jury and entering the same on record, *twenty-five cents,*		25
For entering every judgment, *twenty-five cents,*		25
For copies of records and papers not herein before provided for, for every hundred words, *ten cents,*		10
For every search, *twelve and a half cents,*		12½
For every rule or order not herein before specified, and copy thereof, *twenty-five cents,*		25
For every commission to take depositions, *seventy-five cents,*		75
For entering every appeal, *twelve and a half cents,*		12½

For every certificate and seal not herein before provided for, *fifty cents*,	50
For every subpœna with eight names or less, *fifty cents*,	50
For recording every paper not herein before provided for, for every hundred words, *ten cents*,	10
For taking every acknowledgment of a deed or other writing, *twenty-five cents*,	25

All fees for services rendered by the said clerk, in relation to any matter of county concern, the payment of which is not herein otherwise provided for, shall be paid out of the county treasury.

Clerks of circuit courts

Sec. 5[illegible]. *Be it further enacted*, That the clerks of the several circuit courts shall be respectively entitled for their services in cases at law, [to] the following fees:

For drawing, sealing, and entering every writ original or judicial, filing the same, and docketing return, *one dollar*,	1 00
For filing every declaration, petition, plea, demurrer, affidavit, or other paper in a cause, *six and a fourth cents*,	6¼
For entering every appearance, *ten cents*,	10
For filing every bail bond, *twenty-five cents*,	25
For taking and entering every recognizance of bail in civil or criminal cases, *twenty-five cents*,	25
For taking every bond in a cause, *twenty-five cents*,	25
For entering surrender of principal by bail, *twenty-five cents*,	25
For filing gaoler's receipt or entering exonereter, *twenty-five cents*,	25
For entering an order cancelling a bail bond, or discharging recognizance, *ten cents*,	10
For every issue joined, *twenty-five cents*,	25
For entering every motion or rule, *twenty cents*,	20
For every continuance of a cause, *twenty-five cents*,	25
For every subpœna with eight names or less, *fifty cents*,	50
For every rule of reference for trial, to shew cause, to take depositions, or give security for costs, *twenty-five cents*,	25
For a copy of same if demanded, without seal, *twenfive cents*,	25
For every commission to take depositions, *fifty cents*,	50
For every copy of interrogatories thereto annexed, for every ten words, *one cent*,	1
For entering every order not otherwise provided for, *twenty-five cents*,	25

Clerks of circuit courts

For entering every retraxit, discontinuance, or nonsuit, *fifty cents,*	50
For entering every judgment by confession, default, *nil dicit* or *non sum informatus, fifty cents,*	50
For swearing and entering each jury, *fifty cents,*	50
For attending and striking a special jury, and delivering a copy to each party, *seventy-five cents,*	75
For taking general verdict of a jury, and entering the same on record, *twenty-five cents,*	25
For taking and entering every special verdict, for every ten words, *one cent,*	1
For every trial before the court without a jury, *fifty cents,*	50
For filing every bill of exception, *twelve and a half cents,*	12½
For entering the report of referees, *ten cents,*	10
For entering judgment upon any issue of law, or fact, or on the report of referees, *twenty-five cents,*	25
For entering appeals from inferior courts, *fifty cents,*	50
For entering appeals to supreme courts, *twenty-five cents,*	25
For taking appeal, bond, or recognizance, *fifty cents,*	50
For every writ of certiorari, *fifty cents,*	50
For taking bond on certiorari, *fifty cents,*	50
For every writ of attachment, *one dollar,*	1 00
For administering every oath, *six and a fourth cents,*	6¼
For entering satisfaction of record, *twenty-five cents,*	25
For copies of records and papers, for every ten words, *one cent,*	1
For searching the record within a year, *twelve and a half cents,*	12½
For searching records for every year back, *six and a fourth cents,*	6¼
For bringing a particular record into court, *twenty-five cents,*	25
For every indictment returned by grand jury, *fifty cents,*	50
For every submission, *twenty five cents,*	25
For taking and entering on record, every acknowledgment of a sheriff's deed, *one dollar,*	1 00
For acknowledgment of a deed in other cases, *fifty cents,*	50
For every certificate and seal, *fifty cents,*	50
For every *scire facias* on recognizance, judgement, or to revive a lien, *two dollars,*	2 00
For every venira for summoning a grand jury, or special jury, *seventy-five cents,*	75

Clerks of circuit courts in chancery.

SEC. 6. *Be it further enacted*, That the clerks of the several circuit courts, shall receive for their services in chancery causes the following fees:

For filing every bill, petition, answer, plea, demurrer, or replication in a cause, *twenty cents*,	20
For drawing, sealing, entering, and issuing every writ original, filing the same, and docketing the return, *one dollar*,	1 00
For entering every appearance, *ten cents*,	10
For taking every bond in a cause, *twenty five cents*,	25
For every issue joined, *twenty-five cents*,	25
For entering every motion or rule, *twenty cents*,	20
For every continuance of a cause, *twenty-five cents*,	25
For every subpœna with eight names or less, *fifty cents*,	50
For every rule of reference, to shew cause, to take depositions, or give securiity for costs, *twenty-five cents*,	25
For every commission to take depositions, *fifty cents*,	50
For every copy of interrogatories, for every ten words, *one cent*,	1
For swearing and entering each jury, *fifty cents*,	50
For taking the verdict of a jury, and entering the same on record, *twenty-five cents*,	25
For every trial of an issue of fact, before the court without a jury, *fifty cents*,	50
For entering a final decree, *two dollars*,	2 00
For entering an interlocutory decree, *one dollar*,	1 00
For entering any order not otherwise provided for, *fifty cents*,	50
For entering every report of commissioner, auditor, or referees, *fifty cents*,	50
For filing exceptions to bill or answer, *ten cents*,	10
For filing each affidavit, deposition, or other paper in a cause, *six and a fourth cents*,	6¼
For administering each oath or affirmation, *six and a fourth cents*,	6¼
For entering appeals from inferior courts, *fifty cents*,	50
For taking each appeal, bond or recognizance, *fifty cents*,	50
For entering appeal to supreme court, *fifty cents*,	50
For every writ of *ne exeat* or injunction, *one dollar and fifty cents*,	1 50
For every execution, *seventy-five cents*,	75
For every attachment other than against a witness or juror, *one dollar*,	1 00
For every attachment against a witness or juror, *fifty cents*,	50

For issuing every process of sequestration, *one dollar*,	1 00
For copies of records and papers, for every ten words, *one cent*,	1
For searching the records within a year, *twelve and a half cents*,	12½
For like search, for every year back, *six and a fourth cents*,	6¼
For bringing a particular record into court, *twenty-five cents*,	25
For every certificate and seal, *fifty cents*,	50

And for all other services rendered by the said clerks in chancery, they shall be entitled to the same fees as are or may be allowed by law to the clerks of the circuit courts, for similar services at law.

Clerks of supreme court.

Sec. 7. *Be it further enacted*, That the clerks of the supreme court shall be allowed, for their services, the following fees:

For every writ of error, certiorari, habeas corpus, quo warranto, or mandamus, *one dollar and fifty cents*,	1 50
For every supersedeas, *fifty cents*,	50
For every other writ original, *one dollar*,	1 00
For taking a bond or recognizance, on issuing a writ of error or supersedeas, *one dollar*,	1 00
For filing every transcript, and docketing a cause, *fifty cents*,	50
For filing assignment of errors or joinder, *twenty cents*,	20
For recording the opinions of the court, if required so to do, for every ten words, *one cent*,	1

For every other service to be performed by the said clerks, they shall be entitled to the like fees as are or may be allowed by law to the clerks of the circuit courts, for similar services.

Judge of probate court.

Sec. 8. *Be it further enacted*, That the several judges of the probate courts shall be entitled, for their services, [to] the following fees:

For taking the probate of any will or codicil, and granting certificate, where there is no controversy, *fifty cents*,	50
For a decree respecting the probate of any will or codicil, where the same is contested, and granting a certificate, *one dollar*,	1 00
For granting letters testamentary or of administration, or appointing a guardian, where there is no controversy, *fifty cents*,	50
For granting or refusing letters testamentary or of administration, or the appointment of a guardian,	

Judge of probate court.

where there is a controversy (to be paid by the applicant) *one dollar,*	1 00
For granting letters of administration, pending a suit during the minority or absence of the executor, or appointing a person to collect the estate, *fifty cents,*	50
For administering every oath, *six and a fourth cents,*	6¼
For hearing and determining every application to compel an executor, administrator or guardian to give new bond or additional security, *one dollar,*	1 00
For hearing and determining every application to remove any executor or administrator or guardian, other than as above, *one dollar,*	1 00
For every order making an allowance to a widow or children, *fifty cents,*	50
For every order to sell real or personal estate, *fifty cents,*	50
For every order for the repairing or leasing any real estate, or hiring out slaves, *fifty cents,*	50
For every order setting out dower, *fifty cents,*	50
For hearing and determining application for the sale of real estate, *fifty cents,*	50
For receiving and determining on the report of sales, *fifty cents,*	50
For classing demands, *twenty-five cents,*	25
For apportioning assets among creditors, and ordering the executor or administrator to pay the same, *fifty cents,*	50
For hearing and determining each demand against any estate, *fifty cents,*	50
For every order of distribution, *twenty-five cents,*	25
For receiving and approving distribution, *fifty cents,*	50
For hearing and determining applications for the sale of the estate of minors, *one dollar,*	1 00
For adjusting and settling advancements to children on distribution, *one dollar,*	1 00
For settling and adjusting each account of an executor, administrator or guardian, *one dollar,*	1 00
For taking bonds from heirs to refund, *fifty cents,*	50
For every order touching the administration of any estate or guardianshp, not herein before provided for, *fifty cents,*	50
For hearing and determining any controversy touching any matter in relation to the administration or guardianship, not herein before provided for, *one dollar,*	1 00
For every order for binding an apprentice, *fifty cents,*	50

Judge of probate court.

For hearing and determining every controversy between a master and apprentice, *one dollar*,	1 00
For every judgment, *fifty cents*,	50
For annexing any will or codicil, for every hundred words *ten cents*,	10
For recording any will or codicil, for every hundred words, *ten cents*,	10
For drawing, taking and filing of any bond of an executor, administrator or guardian, and recording the same, *one dollar*,	1 00
For every copy of such bond, *one dollar*,	1 00
For issuing and recording letters testamentary or of administration, *fifty cents*,	50
For every copy of such letters, a certificate and seal, *fifty cents*,	50
For receiving and filing each inventory and appraisement or list of sale, *ten cents*,	10
For receiving and filing every petition for the sale of any real or personal estate, *ten cents*,	10
For keeping abstracts of demands against any estate, for each demand thereon entered, *six and a fourth cents*,	6¼
For keeping and entering the accounts of executors, and administrators or guardians, each item, *three cents*,	3
For drawing, taking and filing every indenture of apprenticeship (to be paid as aforesaid) *one dollar and fifty cents*,	1 50
For recording every indenture of apprenticeship, and for every copy thereof, for every hundred words, *six and a fourth cents*,	6¼
For drawing, sealing and issuing and filing the same, and docketing the return, *seventy-five cents*,	75
For filing every declaration, petition, plea, affidavit, or other papers not herein before provided for, *six and a fourth cents*,	6¼
For entering every appearance, *six and a fourth cents*,	6¼
For entering motions and rules, *twenty cents*,	20
For swearing and entering every jury, *thirty-seven and a half cents*,	37½
For taking and entering the verdict of a jury, *twenty-five cents*,	25
For every copy of any record or paper not herein otherwise provided for, for every hundred words, *six and a fourth cents*,	6¼
For searching the records, *twelve and a half cents*,	12½

For every trial, with or without a jury, *twenty-five cents,*	25
For every rule of reference, to shew cause, to take depositions, and give security for costs, *twenty cents,*	20
For entering every order, not herein before provided for, *twenty cents,*	20
For every commission to take depositions, *seventy-five cents,*	75
For every copy of a rule, without seal, *twenty cents,*	20
For entering every appeal, *twelve and a half cents,*	12½
For every subpœna, with four names or less, *twenty-five cents,*	25
For every *scire facias, one dollar,*	1 00
For taking and entering every recognizance, *twenty-five cents,*	25
For every certificate and seal, *fifty cents,*	50
For every attachment, *fifty cents,*	50
For every process of sequestration, *one dollar,*	1 00
For taking the acknowledgment of a deed or other writing, *fifty cents,*	50

For all other services, the like fees as are or may be allowed by law, to justices of the peace for similar services. **Justices of the peace.**

Sec. 9. *Be it further enacted,* That justices of the peace shall be entitled to ask, demand and receive the following fees for their services:

For administering every oath, *six and a fourth cents,*	6¼
For every summons or warrant in civil cases, *eighteen and three fourth cents,*	18¾
For every subpœna including four names or less, *eighteen and three fourth cents,*	18¾
For issuing every attachment, *twenty-five cents,*	25
For entering judgment in every civil case, *thirty-seven and a half cents;*	37½
For issuing each execution, *twenty-five cents,*	25
For making certified copies on appeals or certiorari, for each hundred words contained therein, *ten cents,*	10
For taking and entering special bail, *twelve and a half cents,*	12½
For issuing a bail piece, *twenty-five cents,*	25
For granting and drawing a writ of habeas corpus, and deciding thereon, to each justice, *one dollar and fifty cents,*	1 50
For issuing a scire facias against bail to renew judgment, *twenty-five cents,*	25
For issuing a venire for a jury in each civil case, *one dollar and fifty cents,*	1 50

For taking the acknowledgment of a deed or power of attorney, *twenty-five cents*,	25
For solemnizing marriages, *two dollars*,	2 00
For signing and certifying depositions, if ready, *twenty-five cents*,	25
For writing depositions, when required so to do, for every hundred words, *ten cents*,	10
For issuing a summons on a complaint of forcible entry and detainer, or forcible detainer and holding over, to each justice, *seventy-five cents*,	75
For a venire to summon a jury in cases of forcible entry and detainer, for each justice, *twenty-five cents*,	25
For issuing every writ of restitution, to each justice, *fifty cents*,	50
For taking and entering a verdict on forcible entry and detainer, to each justice, *twenty-five cents*,	25
For appointing appraisers of estrays, or of money, or goods found, *twenty-five cents*,	25
For certified copies of the valuation and appraisement, *twenty-five cents*,	25
For issuing an order to view a fence, *twenty-five cents*,	25
For issuing a warrant to assess damages for burning fences and prairies, *twenty-five cents*,	25
For a view of each dead body, the same fees as the coroner for like services.	

Jurors.

Sec. 10. *Be it further enacted*, That jurors shall be entitled to the following fees:

For each juror attending a view, inquest, or on the execution of a writ of *ad quod damnum*, per day, *fifty cents*,	50

Witnesses.

Sec. 11. *Be it further enacted*, That each witness shall be entitled to receive the following fees:

For attending any court of record, referee, auditor, or commissioner at any inquest, inquiry of damages, or inquisition, within the county in which the witness resides, each day, *fifty cents*,	50
And for like attendance out of the county in which he resides, each day, *one dollar*,	1 00
For travelling allowance in the above cases, for each mile he shall necessarily travel in going to, and returning from the place of trial, *five cents*,	5
For attending before a justice of the peace, each day, *fifty cents*,	50

Cannot charge fees in more than one cause for same day

Witnesses summoned and attending in more than one cause on the same day, shall only be allowed to charge their fees in one cause, and any witness who shall charge fees for attending two or more causes in the same day, shall not be entitled to receive any fees for that day; and every account for the attendance of any witness shall be accompanied by an affidavit stating that he was summoned to attend as a witness, in the cause in which the charge is made, and that he did attend that cause for the number of days charged, and he must necessarily travel the number of miles in going from his place of residence to the place of trial and returning thence, and that he has not charged the fees included in his account, or any part thereof in any other cause; which affidavit shall be taken and a certificate given by the clerk of the respective courts, without fee or reward for that service.

Account to be accompanied by an affidavit.

Commissioners.

Sec. 12. *Be it further enacted*, That auditors and commissioners appointed by the courts respectively, shall be entitled to the following fees:

For hearing, stating, and adjusting accounts referred to them by any court, for every page of thirty lines, *twenty cents*,	20
For taking each deposition, for every ten words, *one cent*,	1
For the examination of each party, and witnesses, or depositions, *twelve and a half cents*,	12½
For administering each oath or affirmation, *six and a fourth cents*,	6¼
For every subpœna containing eight names or less, *fifty cents*,	50
For every attachment, *fifty cents*,	50

For every report, such compensation as the court appointing them, shall deem reasonable.

Sheriffs.

Sec. 13. *Be it further enacted*, That the several sheriffs shall ask, demand, and receive for their services, the following fees:

For serving every capias, summons, or declaration in ejectment, and returning the same, for each defendant, *one dollar*,	1 00
For taking and returning every bail bond, *fifty cents*,	50
For serving every writ of *scire facias*, or attachment, for each defendant, *one dollar*,	1 00
For serving every *ne exeat*, or injunction, for each defendant, *one dollar*,	1 00
For serving every *habere facias possessionem*, or sequestration, *two dollars*,	2 00
For serving every writ of execution, *one dollar*,	1 00
For every return of *non est*, on any writ, original or judicial, *fifty cents*,	50
For every return of *nulla bona*, *fifty cents*,	50
For executing a writ of inquiry, drawing inquisi-	

tion, and returning the same, *one dollar and fifty cents,*	1 50
For summoning each grand jury, *five dollars,*	5 00
For summoning each special jury to try forcible entry and detainer, or to assess damages, or on a special venire facias, *four dollars,*	4 00
For summoning each witness, *fifty cents,*	50
For every return of a non est on a subpœna, *twelve and a half cents,*	12½
For serving every notice or rule of court, notice to take depositions, or citation on executor, administrator or guardian, *fifty cents,*	50
For committing any person to gaol on civil process, *fifty cents,*	50
For discharging every commitment in civil cases, *fifty cents,*	50
For attending each court, per day, *one dollar and fifty cents,*	1 50
For calling every action at each term, *ten cents,*	10
For calling each party, *ten cents,*	10
For calling each jury, *twenty-five cents,*	25
For calling every witness, *six and a fourth cents,*	6¼
For committing a criminal to gaol, *seventy-five cents,*	75
For furnishing a prisoner with board, each day, *thirty-seven and a half cents,*	37½
For every trial in a criminal cause or confession, *one dollar thirty-three cents,*	1 33
For every trial in a capital cause, *three dollars,*	3 00
For executing every death warrant or sentence of death, *ten dollars,*	10 00
For the safe keeping, supporting and removing live stock, and other property seized under legal process, such fees as the court out of which the process issued shall deem reasonable, to be paid as other costs.	
For commission for receiving and paying moneys on execution or other process, where lands or goods have been taken into custody, advertised and sold, three and a half per centum on the first two hundred dollars, and two per centum on all sums above that sum, and one half of such commission where the money is paid to the sheriff without seizure, or where the lands and goods seized or taken shall not be sold.	

Executions, &c. from supreme court, how returned, and sheriff's fee.

It shall be the duty of the party on whose application any writ, execution, subpœna or other process has issued from the supreme court, to cause the same to be returned without fee, unless the court shall for special reasons order the personal attendance of the sheriff; in which case, he shall be allowed, for each mile going and returning from the court house of the county in which he resides to the place where the writ is returnable, five cents: *Provided*, That all moneys collected by sheriffs shall be paid to the plaintiff, or his order, or his attorney of record.

Money collected on execution, how paid over.

Coroners.

SEC. 14. *Be it further enacted*, That the several coroners shall be entitled, for their services, to the following fees:

For the view of each dead body, *three dollars*,	$3 00
For issuing a warrant summoning each jury of inquest, *fifty cents*,	50
For swearing each jury, *fifty cents*,	50
For each subpœna for witnesses, *twenty-five cents*,	25
For taking each recognizance, *twenty-five cents*,	25
For going from his residence to the place of viewing the dead body and returning, each mile, *five cents*,	5

Costs of inquest.

Which fees, together with the fees allowed to jurors, constables and witnesses in all inquests, shall be paid out of the county treasury as other demands.

Coroner performing duties of sheriff

For performing the duties of sheriff, the coroner shall be entitled to the same fees as are, for the time being, allowed to sheriffs for such services.

Constables.

SEC. 15. *Be it further enacted*, That constables shall be entitled to charge and receive the following fees, for their services:

For serving a warrant in a criminal case, for each defendant, *fifty cents*,	50
For serving a warrant or summons in a civil case, for each defendant, *twenty-five cents*,	25
For summoning and swearing each jury to try the right of property, and taking verdict, *one dollar*,	1 00
For summoning each jury before a justice, *one dollar*,	1 00
For taking criminal or debtor to gaol, *seventy-five cents*,	75
For serving, or giving notice of each execution, *fifty cents*,	50
For summoning every witness, *twenty-five cents*,	25
For receiving and keeping property taken on execution, such compensation as may be awarded by the justice from whom the process issued, on statement to him by the constable on oath.	
For collecting and paying over to the plaintiff, for all sums collected, three per centum.	

Interpreters & translators

SEC. 16. *Be it further enacted*, That interpreters and translators, shall receive the following fees for their services:

For interpreting the testimony of each witness, *fifty cents*,	50
For translating every hundred words, *twenty-five cents*,	25

Surveyors. Sec. 17. *Be it further enacted*, That the several county surveyors shall be entitled to the following fees:

For every survey actually made, the sum of *two dollars*,	$2 00
And the further sum of one cent for every chain lineal measure above one hundred chains.	
For calculating the quantity of every tract of land not divided, *seventy-five cents*,	75
For calculating each division made in a tract of land, *seventy-five cents*,	75
For making each plat, *fifty cents*,	50
For recording a plat and certificate, *fifty cents*,	50
For a copy of plat and certificate, *fifty cents*,	50
For every search, where no copy is required, *twelve and a half cents*,	12½
For travelling to the place of surveying and returning, per mile, *five cents*,	5

Recorders. Sec. 18. *Be it further enacted*, That the several recorders shall be entitled to the following fees:

For recording every deed or other instrument, for every hundred words, *ten cents*,	10
For copies of any record, the like fees.	
For every search, *twelve and a half cents*,	12½
For every certificate and seal, *twenty-five cents*,	25
For recording a plat of survey, if not more than six courses, *thirty-seven and a half cents*,	37½
For every course above six, *five cents*,	5
For copies of plat, if not more than six courses, *thirty-seven and a half cents*,	37½
For every course above six, *five cents*,	5

Notaries public. Sec. 19. *Be it further enacted*, That the several notaries public shall be entitled to the following fees:

For noting a bill of exchange or promissory note for protest, *twenty-five cents*,	25
For entering protest of same, *fifty cents*,	50
For registering a protest, *fifty cents*,	50
For noting without protest, *fifty cents*,	50
For notice to endorsers and other parties, each, *twenty-five cents*,	25
For travel, per mile, *ten cents*,	10
For taking an acknowledgment of a power of attorney, or other instrument, *fifty cents*,	50
For a marine protest, *two dollars*,	2 00
For each certificate, *twenty-five cents*,	25

For an affidavit to an account, attested by his seal, *fifty cents*,	50
For affixing notarial seal, *twenty-five cents*,	25
For drawing a contract of a boatmen, if required by the parties, *fifty cents*,	50
For taking the acknowledgment of the parties to such contract, *one dollar*,	1 00
For making an entry of a boatman not rendering himself on board agreeably to contract, *twenty-five cents*,	25
For affixing his seal thereto, *twenty-five cents*,	25
For all copies of records or papers in his office, for every hundred words, *ten cents*,	10

For all other services concerning boatmen and their contracts, the same fees as are allowed to justices of the peace, for like services.

Secretary of state.

SEC. 20. *Be it further enacted*, That the secretary of state, shall be entitled to ask, demand, and receive the following fees:

For every certificate to authenticate any instrument of writing, to which the seal of state shall be affixed, *one dollar*,	1 00
For every like certificate to which the seal of his office shall be affixed, *one dollar*,	1 00
For all copies of records and papers in his office, for every hundred words, *ten cents*,	10

Provided, That no fees shall be allowed for any services in the business of the state.

Auditor of public accounts.

SEC. 21. *Be it further enacted*, That the following fees be allowed to the auditor of public accounts, to wit:

For executing a release to lands which have been bid off to the state for taxes, *seventy-five cents*.	75
For each copy of an account or document in his office with the seal of office thereto affixed, to be paid by the party applying for the same, *seventy-five cents*,	75

Figures, calculated each as one word.

SEC. 22. *Be it further enacted*, That in all cases where fees are allowed by this act according to the number of words, each figure shall be calculated as one word.

Returns of writs, &c. to specify the time when, &c.

SEC. 23. *Be it further enacted*, That it shall be the duty of each sheriff, coroner and constable, in the return made by him on any writ, summons, execution or other process, to state at full length the time when such writs, summons, executions or other process was served, and how; and any sheriff, coroner or constable neglecting or refusing to comply with this requisition, shall not be entitled to demand or receive any fee for the service or execution of the same.

Officers to set up table of fees.

Penalty for neglect.

Sec. 24. *Be it further enacted*, That every officer, to whom by this act fees have been allowed, shall cause to be set up in some conspicuous place in their respective offices, if any they have, and there constantly kept, a fair table of their fees herein before mentioned, on pain of forfeiting two dollars for every day the same shall be missing through his neglect; which penalty shall be to the use of the person or persons who shall inform or sue for the same, and shall and may be recovered in any court of competent jurisdiction within this state, by action of debt or information.

Attornies & counsellors, fees limited.

Sec. 25. *Be it further enacted*, That attornies or counsellors at law are not authorized to claim higher fees than are herein allowed, unless by special contract.

Fee bills may be issued by officers and witnesses, at each term.

How collected.

Sec. 26. *Be it further enacted*, That it shall be lawful for all officers or witnesses, entitled to fees by this act for services rendered in any suit or controversy depending in any court in this state, to make out fee bills for services by them rendered in any suit or controversy at the end of each term, where the same is pending, charging the party at whose instance the services were rendered; which charges shall be examined by the clerk,—and if found correct, he shall deliver such fee bills to the sheriff of the proper county, to be by him collected, and if the person chargeable shall neglect or refuse to pay the amount thereof to the sheriff, within twenty days after the same shall be demanded, the sheriff shall or may levy such fees on the goods and chattels of such party, in the same manner and with the like effect as on *fieri facias;* and the sheriff shall be allowed a compensation of eight per centum for collecting such fees, to be paid out of the amount charged: and if any sheriff shall neglect or refuse to levy and collect such fees as aforesaid, or pay over the moneys when collected to the person entitled thereto, within three months after such fee bills shall be delivered to him, the court may, upon ten days previous notice to him given, on motion, enter judgment for the amount of the fee-bills so delivered to him, and issue execution therefor.

Party paying fees before judgment, to recover them

Costs not paid before judgment, to be endorsed on execution

Sec. 27. *Be it further enacted*, That if any party to a suit or other proceedings shall pay any of the fees allowed by this act before final judgment, and judgment shall thereafter be rendered in his favor, and costs adjudged to him, the amount so paid shall be taxed and endorsed on the execution, and levied and collected by virtue thereof, for the benefit of such party; and all fees which shall not be so paid shall be endorsed on the execution and levied and collected for the benefit of the person rendering the service, or the same may be collected on fee bills as aforesaid: *Provided*, That only the costs of the prevailing party shall be taxed and endorsed on the execution, and levied and collected by virtue thereof.

Fees of each officer to be endorsed on execution.

Clk to keep fee book.

Sec. 28. *Be it further enacted*, That the clerks of the respective courts shall endorse, on every execution by them issued, the fees due to each officer and any other person distinctly, and shall, at the time of issuing an execution or fee bill, or of recovering any fees due to them by any party or other person, enter in a particular book the several items by words at full length, for which he has charged, and deliver to any party or person from whom such fees are due, on demand, a full and complete copy of the entry made in said book, without any compensation for the same. And whenever any suit is instituted against any clerk, or other officer, for having asked, demanded or taken illegal fees, they may give in evidence on trial the book or books in which such entries are made; and no fees of any sheriff, coroner, justice of the peace, constable, or any other officer or person to whom fees may be due and owing, as recited in this act, shall be collected or paid by any person against whom the same may be exhibited, either on execution, fee bill or otherwise, until the sheriff, coroner, justice, constable, or other officer or person shall produce and deliver unto the person owing and chargeable with the same, if demanded, a fee bill or account in writing, containing in words at length the particular items for which such fees are charged, signed by such sheriff, coroner, or other officer or person to whom the same may be due.

Payment of fees cannot be enforced until fee bill delivered, if demanded.

Penalty for extortion.

Sec. 29. *Be it further enacted*, That if any officer shall hereafter ask, demand, charge or receive any more or greater fees for their services than is herein before set down, ascertained and established, or if any of the officers aforesaid, shall ask, demand or receive any of the fees herein before recited and established, where the business for which such fees are chargeable shall not have been actually done and performed (to be proved by the fee book of such person, upon his oath or affirmation)—such officer, for every such offence, shall forfeit and pay to the party injured or against whom the same shall have been charged, besides such fee or fees, five dollars for every particular article, item or fee asked, demanded, charged or received, to be recovered, with costs, by action of debt before any justice of the peace within this state, provided the same be sued for within twelve months from the time the offence shall have been committed.

In what cases fees shall be paid by the county.

Sec. 30. *Be it further enacted*, That in all criminal cases other than capital, and in all cases where the fine, penalty or forfeiture, or any part thereof, on conviction, would accrue to any county, the fees of officers and witnesses concerned therein shall be allowed and paid out of the county treasury, if the defendant be acquitted, or where the defendant, or his estate, or the prosecutor, is not made liable for the payment of costs or proves insolvent; and in all capital cases, and other cases where the fine, penalty or forfeiture, on conviction, would accrue to the state, the fees, in case of acquittal or inability of the defendant or prosecutor to pay the same, shall be paid out of the state treasury.

When by the state.

How fees chargeable to state or county are to be audited and certified.

Sec. 31. *Be it further enacted*, That in all cases where the state or any county shall be chargeable with fees, the courts respectively in which the services are charged for are rendered, shall audit and adjust the accounts, and certify the amount due, and the amount thereof shall be paid out of the state or county treasury accordingly, on warrants to be drawn therefor as for other demands, for the issuing which warrant, the certificate of the court allowing the amount shall be sufficient voucher. And where any fees shall be due for such survices heretofore rendered, they shall be audited and paid in like manner.

This act shall take effect, and be in force from and after the first day of March next.

[*Approved, February* 19*th*, 1825.]

FERRIES.

18 Dec 1824.

AN ACT regulating Ferries.

Not to be kept without license.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That no person or persons shall keep a ferry within this state so as to demand and receive pay thereat, without a special license first had and obtained for that purpose.

Application for license, how made.

License to be granted, and tax assessed by court.

Tax limited.

License to issue on applicant paying tax, and giving bond.

Sec. 2. *Be it further enacted*, That any person or persons wishing to obtain a license to keep a ferry, shall petition the court or tribunal having the transaction of county business, for leave to keep such ferry; and if the said court or tribunal, shall be of opinion that such ferry is necessary, and that the person petitioning is a proper person to keep such ferry, they shall order their clerk to issue a license, upon the payment of the tax to be by them assessed and named in such order, which tax shall not be less than two dollars, nor more than five hundred dollars, and shall be for the use of the state; and upon the payment of such tax to the collector of the county, and producing his receipt therefor to the clerk of the said court or tribunal, the said clerk shall issue a license to such person or persons to keep a ferry at the place therein described, for the space of one year from the date thereof: *Provided, always,* That such person shall, before such license shall be delivered to him, give bond, with sufficient security, to be approved of by the said clerk, in such sum as the said court or tribunal shall order, which bond shall be taken to the State of Missouri, and conditioned for the faithful performance of the duties and services required by law at such ferry, and shall be filed in the office of said clerk.

Bond, how taken.

Rates of ferriage to be fixed by court.

Sec. 3. *Be it further enacted,* That the said court or tribunal, shall state the fare or rate of ferriage at each ferry, and may from time to time alter the same, always having regard to the breadth and situation of the stream, and the publicity of the ferry: *Provided,* That the fare, or rates of ferriage shall not be changed during the continuance of any license.

License may be granted by clerk in vacation.

Sec. 4. *Be it further enacted,* That the clerks of the several courts or tribunals, transacting county business, shall have power in vacation to grant licenses for keeping ferries within their respective counties, and may assess the tax thereon, and fix the fare or rates of ferriage, to be charged at such ferry—and shall in vacation, have all the power in relation to the granting such license, vested in the said courts or tribunals; which license shall continue until the end of the next succeeding term of the said court or tribunal, to be holden in the same county, and the tax thereon shall be assessed in proportion to the time for which the license is granted; and all other proceedings by the clerk and collector, relating to such license, shall be the same in all respects as upon licenses granted by the said court or tribunal.

To continue to the end of next term.

Good boats and sufficient hands to be kept.

Sec. 5. *Be it further enacted,* That ferrymen at the several ferries in this state, shall keep a good boat or boats, in good repair, suitable to the water they are to ferry over, with a sufficient number of able hands, and give ready and due attendance on all occasions, and every ferryman neglecting or refusing to give such attendance, shall, for every such offence forfeit and pay the sum of five dollars, and for neglect in keeping such boat or boats, in good repair as aforesaid, he shall forfeit the sum of thirty dollars to the use of the county wherein such ferry may be situated; and be further liable to pay all such special damages as any person shall sustain by such neglect, to be recovered in an action of trespass on the case, in any court having jurisdiction thereof: *Provided, however,* That no person keeping a ferry, shall be obliged to transport any person, or thing, before payment therefor has been made, or tendered, according to the rates established for such ferry.

Penalty for neglect.

Special damages.

Ferriage to be first paid or tendered.

List of rates to be put up. Penalty for neglect.

SEC. 6. *Be it further enacted,* That each and every ferryman so licensed as aforesaid, shall keep a list of the rates of ferriage at such ferry, as is established by law, written in a fair and legible hand, or printed, and constantly posted up at some public place, either at the ferry, or at the ferry house, and if any such ferryman shall neglect or refuse so to do, he shall forfeit and pay the sum of four dollars for every such offence, to the use of the county wherein such ferry may be.

Keeping ferry without license. Penalty. Damages. Penalties, how recovered. Bond to be sued on, how.

SEC. 7. *Be it further enacted,* That if any person or persons, shall keep a ferry, so as to demand and receive pay, not having first obtained a license in the manner before pointed out, he or they shall, for every such offence forfeit and pay twenty dollars, for each and every day upon which such person or persons shall keep a ferry as aforesaid, to the use of the county wherein such ferry may be, and be further liable in a special action on the case, to pay such damages as may or shall accrue to the person licensed and authorised to keep such ferry. And all the penalties imposed by this act, may be sued for, and recovered before a justice of the peace, or circuit court if the penalty exceed ninety dollars, in an action of debt, in the name of the county; and upon every such neglect and failure in any of the duties required of any ferryman by this act, it shall be the duty of the attorney general, or circuit attorney prosecuting for the district, to commence and prosecute an action against such ferryman, and his security or securities, on their bond, and the recovery of the penalties herein before prescribed for such neglect or failure, shall be no bar to a recovery on the bond: *Provided, always,* That every offence against this law, shall be prosecuted within one year after the offence is committed.

Licenses may be revoked.

SEC. 8. *Be it further enacted,* That upon the non-performance of his duties as ferryman, the said court or tribunal, may at any time revoke the license, of any ferryman under this act.

[*Approved, December* 18*th*, 1824.]

FORCIBLE ENTRY AND DETAINER.

Feb. 18, 1825.

AN ACT concerning Forcible Entries and Detainers.

What deemed forcible entry and detainer.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That no person shall hereafter make any entry into any lands, tenements or other possessions, but in cases where entry is given by law; and in such case, not with strong hand, nor with multitude of people, but only in a peaceable and easy manner. And if any person from henceforth do to the contrary, he shall be taken and deemed to have entered with strong hand, and shall be adjudged guilty of a forcible entry and detainer within the meaning of this act.

What deemed an unlawful detainer.

Sec. [illegible]. *Be it further enacted*, That when any person shall wilfully and without force hold over any lands, tenements or other possessions, after the determination of the time for which they were demised or let to him, or the person under whom he claims, or shall lawfully and peaceably obtain possession, but shall hold the same unlawfully and by force, and after demand made in writing for the deliverance of the possession thereof, by the person having the legal right to such possession, his agent or attorney, shall refuse or neglect to quit such possession, such person shall be deemed guilty of an unlawful detainer.

Sec. [illegible]. *Be it further enacted*, That the aforesaid forcible entries and detainers, and unlawful detainers, are hereby made cognizable before any two justices of the peace of the county in which they are committed.

Upon complaint in writing to two justices of the peace.

Sec. [illegible]. *Be it further enacted*, That when complaint to any two justices of the peace of the proper county shall be made, in writing, and signed by the party grieved, his agent or attorney, specifying the lands, tenements or other possessions so forcibly entered and detained, or unlawfully detained, by whom and when done, it shall be the duty of the said justices to issue a summons, under their hands, directed to the sheriff or coroner (as the case may be) of the same county, commanding him to summon the said person against whom the complaint shall be made, to appear before the said justices at a day in such summons to be named, which shall not be less than six nor more than twelve days from the time of issuing such summons, and at a place to be therein named; which said summons shall be accompanied by the complaint annexed thereto, and shall be served at least five days before the return day thereof, by reading the said summons and complaint to the party therein named, or by leaving a copy thereof at his usual place of abode; which said summons shall be in form or to the effect following:

A summons to issue.

Accompanied by the complaint.

Service.

Form of summons.

THE STATE OF MISSOURI,

To the sheriff, or coroner (as the case may be) *of the county of* ——, *Greeting:*

You are hereby commanded to summon G.H. of the county of ——, to appear before the undersigned, two justices of the peace within and for said county, at —— in the said county, on the —— day of ——, at the hour of —— o'clock, in the ——noon of said day, then and there to answer and defend against the complaint of E. F. of a forcible entry and detainer, or of an unlawful detainer (as the case may be) made by the said G. H. in the messuage (or upon the lands) of the said E. F. in the county aforesaid, as by the complaint of the said E. F. hereunto annexed will more fully appear; and have you then there this precept, with a return of your proceedings thereon.

Given under the hands of the said justices, the —— day of ——, in the year of our Lord ——.

A. B.
C. D. } *Justices of the peace.*

Precept for summoning a jury.

And the said justices shall also, at the same time, issue a precept to the said sheriff or coroner, commanding him to summon twelve good and lawful men qualified to serve as jurors, to appear at the same time and place appointed for the trial or hearing of said complaint, to be a jury in the said cause; which said precept shall be in the form or to the effect following, to wit:

Form.

THE STATE OF MISSOURI,

To the sheriff, or coroner (as the case may be) *of the county of* ——, *Greeting:*

Whereas complaint in writing is made to the undersigned, two justices of the peace in and for said county, of a certain forcible entry and detainer (or if of detainer only, then say of a certain unlawful detainer) made by G. H. in the messuage or upon the lands of E. F. in the county aforesaid: These are therefore to command you, that you cause to come before the said justices at —— in the county aforesaid, on the —— day of ——, at the hour of —— o'clock in the ——noon of said day, twelve good and lawful men, of the body of said county, to make a jury to inquire into the said forcible entry and detainer (or unlawful detainer) before described.

Given under the hands of the said justices, the —— day of ——, in the year of our Lord ——.

A. B.
C. D. } *Justices of the peace.*

Jurors not attending, or challenged, others to be summoned.

And if a sufficient number of the jurors summoned and returned on the said precept do not attend, or are set aside by challenge, the said justices may order the sheriff or coroner to complete the number by returning others forthwith.

Return of summons & precept,

Sec. 5. *Be it further enacted,* That the said sheriff or coroner shall return to the said justices the summons and precept aforesaid, on the day assigned for the trial or hear-when and how made.

ing of the cause, and shall state on the back of said summons how and in what manner he hath served the same on the party, and on the back of the precept a list of the jury summoned in obedience thereto. And if the party does not appear at the time appointed for hearing the said complaint, the said justices may proceed *ex parte* or adjourn the cause, at their discretion, except that they shall not adjourn for a longer time than ten days, nor to any other place than that assigned for the hearing of the complaint as named in the summons.

Party not appearing, proceedings to be *ex parte* or cause adjourned.

SEC. 6. *Be it further enacted*, That the said justices shall have power, or any one of them, to issue subpœnas for witnesses on the application of either party, or to enter up a rule for taking depositions, the party obtaining the same giving the opposite party a copy of such rule, together with a notice of the time and place of taking the same,—which notice shall be served, giving to the opposite party one day's notice for every twenty miles travel; and if the witnesses so summoned do not attend, the justices may, at their discretion, on the application of either party, adjourn the case for any term not exceeding ten days,—and shall have authority to issue attachments for the witnesses so summoned, to compel their attendance on the day to which the cause shall stand adjourned.

Subpœnas for witnesses how issued, and depositions taken.

Cause may be adjourned

SEC. 7. *Be it further enacted*, That the jury, being empannelled, shall be sworn well and truly to try the forcible entry and detainer, or the unlawful detainer (as the case may be) in the complaint of the said E. F. alleged, and a true verdict to give thereon according to evidence. And after they are so sworn, the said justices shall cause the said complaint to be read to them, and then call upon the complainant to support the same; but it shall not be deemed necessary for the complainant to make any further proof of the forcible entry or detainer with strong hand, than that he was lawfully possessed of the premises, and that the defendant unlawfully entered into and detained the same. And if the jury, after a full hearing, do find the defendant guilty, the said justices shall record the said verdict, and shall give judgment thereon for the complainant to have restitution of the premises and his costs; and shall also award their writ of restitution in the form hereafter directed; but if the jury find that the person complained against is not guilty, the said justices shall give judgment accordingly, and shall tax costs against the complainant and issue execution therefor.

Oath to be administered to jurors.

Complaint to be read.

Proof of forcible entry and detainer.

On general verdict of guilty, judgt. of restitution

Verdict of not guilty, judgment.

SEC. 8. *Be it further enacted*, That the verdict of the jury shall be in writing, and signed by the foreman only, and shall be in the form or to effect following, to wit:

Verdict of jury to be in writing; form

"We, the jury, do find the defendant guilty (or not guilty, as the case may be) of the forcible entry and detainer (or if the complaint is for an unlawful detainer only, then say of the unlawful detainer) in manner and form as the said complainant hath in his complaint alleged."

Verdict for part only.

Or if the said jury shall find the defendant guilty as to a part only, the verdict may be in the form or to the effect following, to wit:

"We, the jury, do find the defendant guilty of the forcible entry and detainer (or of the unlawful detainer, as the case may be) as to a part of the premises described in the complaint of the said complainant, in manner and form as he hath therein alleged, to wit, as to [here set out the particular part of the premises in which they find the defendant guilty] and as to the residue, they find the defendant not guilty."

New trial may be granted by justices.

Sec. 9. *Be it further enacted*, That in all cases under this act, it shall be lawful for the said justices to grant a new trial, if the same be applied for on the day on which the verdict is rendered, and good cause be shown therefor: *Provided*, That not more than one new trial shall be granted to the same party.

Justices to keep docket of their proceedings.

Sec. 10. *Be it further enacted*, That it shall be the duty of the said justices to keep a regular docket of their proceedings under this act, and to enter thereon true copies of the complaint, the summons and venire, and the returns thereon, and the names of the jurors, their verdict, and the judgment of the said justices thereon, and all other proceedings before them had touching the said complaint.

Appeal not allowed, but proceedings may be removed by certiorari.

Sec. 11. *Be it further enacted*, That no appeals shall be allowed from the judgment of the justices under this act, but the proceedings may be removed after judgment by certiorari into the circuit court, and there set aside for irregularity.

Proceedings to be returned on certiorari.

Sec. 12. *Be it further enacted*, That when any certiorari shall be served upon the said justices to remove any such proceedings into the circuit court, the justices shall return thereto a complete copy of their docket, containing a copy of all process and proceedings had before them in the said cause.

Certiorari to be applied for in 30 days and notice given.

Sec. 13. *Be it further enacted*, That no certiorari shall be allowed to remove any cause under this act, unless applied for within thirty days after the judgment shall have been rendered; and in all cases where the party shall obtain a certiorari, he shall notify the opposite party thereof, at least ten days before the sitting of the next court, authorized to try the same. And when application shall be made

Bond to be given.

for a writ of certiorari, the party applying shall give bond

Condition.

Consequence of failure to give bond.

Default of notice.

Proceedings where bond is given.

and security in such sum as the clerk of the circuit court shall direct, and to be approved of by him, conditioned for the payment of all costs, that have accrued in the said suit in the court below, and that shall accrue in the said circuit court, if he shall fail to prosecute the said certiorari with effect, and in default thereof, the said certiorari not to operate as a supersedeas; but in default of the notice above required, the said certiorari shall be dismissed. And when such bond and security shall be given, the same shall be filed in the office of the clerk of the circuit court, and a memorandum thereof endorsed on the writ of certiorari; and in that case the said writ of certiorari being served upon the said justices, shall operate as a supersedeas to all further proceedings in the court below, and if an execution shall have been issued, but not executed, the same may be stayed in the hands of the officer, by shewing him the said writ of certiorari, or by the order of the said justices issuing the said execution.

Limitation of this remedy.

SEC. 4. *Be it further enacted*, That this law shall not extend to any person who hath had the occupation, or been in quiet possession of any lands or tenements, for the space of three whole years together next before the filing of the complaint, or who hath continued five whole years in the peaceable possession, after the time for which the premises were demised, or let to him or them, under whom he claims, shall have expired.

Actual settlers on public lands to have this remedy.

SEC. 5. *Be it further enacted*, That every person or persons, who shall have heretofore, or hereafter make and establish a settlement on public lands, and who shall have resided for one year on the same next before the forcible entry and detainer, or unlawful detainer complained of, shall and may have the same remedy as is herein before provided in such cases, against any person or persons, who shall make unlawful entry upon him or them as aforesaid: *Provided, however*, That nothing herein contained shall prevent any person, having authority from the United States, or claiming under them, from entering into such lands. This act shall also extend as well to tenants for years and guardians, as to such as have estates of freehold.

Proviso.

Remedy of tenants for years, and guardians.

Quantity and extent of recovery

SEC. 16. *Be it further enacted*, That when any forcible entry and detainer, or unlawful detainer, shall be made into or upon any lands, tenements or other possessions, against the provisions of this act, the person or persons having the lawful possession thereof shall, against the wrongdoer or trespasser, be considered as entitled to such quantity and to such extents and limits of lands, as by the patent, grant, concession, deed, survey, donation, settlement, or pre-emption right, such person, or those under whom he claims, can by the laws of the United States, or of this state, have and lawfully claim in and to such premises, and in case no legal survey hath been made of such possessions, the improvement of such person entitled to the possession, shall be in the middle of the tract, or as near as may be, making the survey as nearly in a square as the same may be, not to interfere with any established surveys, or line, or any conditional lines agreed upon, by the adjoining proprietor, or possessors.

Where there is no survey.

Judgment, no bar to other proceedings.

Sec. 17. *Be it further enacted*, That no judgment under or by virtue of this act, shall be a bar to any other action at law, brought by either party, either to try the right of property or for intermediate damages.

Sec. 18. *Be it further enacted*, That the writ of restitution, shall be in the form or to the effect following, to wit:

Form of writ of restitution

THE STATE OF MISSOURI,

To the sheriff or coroner, (as the case may be) *of the county of* ——, *Greeting:*

Whereas, E. F. did make to the undersigned, two justices of the peace within and for the said county, a complaint in writing against G. H. of said county, that he had been guilty of a forcible entry and detainer (or of an unlawful detainer, as the case may be) of a certain messuage (or tract of land or other possession, as the case may be) of the said E. F., described as follows, [here insert the description of the property as contained in the complaint;] And whereas the jury empanneled and sworn to inquire of the said forcible entry and detainer (or unlawful detainer) did return their verdict that the said G. H. was guilty thereof, in manner and form as the said E. F. had complained against him, (or if the verdict is, guilty as to a part only, then add to the end of the verdict, as to a part and parcel of the said premises) described as follows, [here insert the description of that part of the premises of which the defendant is found guilty, as described in the verdict;] And whereas judgment was thereupon entered by the said justices, that the said E. F. should have restitution of the said premises: You are therefore hereby commanded, to take with you the power of the county, if necessary, and to cause the said G. H. to be forthwith removed from the premises aforesaid, and the said E. F. to have the peaceable restitution of the same; and also to levy of the goods and chattels, lands and tenements of the said G. H. found in your county, the sum of ——, being taxed in costs against him on the trial aforesaid, together with —— more, for this writ and your own fees. And for want of sufficient goods and chattels, lands and tenements of the said G. H. found in your county, whereon to levy and make the same, you are commanded to take the body of the said G. H. and him commit to the common gaol of the county, there to remain until he shall pay the sum aforesaid, together with all the fees adjudged for the service of this writ, or until he be delivered by due course of law. And make return of this writ, with your proceedings thereon.

Given under the hands of the said justices, the —— day of ——, in the year of our Lord ——.

A. B.} *Justices of the peace.*
C. D.}

Re-restitution, when to be awarded.

SEC. 19. *Be it further enacted*, That when any proceedings under this act shall be set aside in the circuit court for irregularity, and restitution of the premises shall have been had under the judgment in the court below, the said circuit court may award a writ of re-restitution.

[*Approved*, *February* 18, 1825.]

FRAUD.

4th Jan. 1825.

AN ACT for the prevention of Frauds and Perjuries.

Conveyances in trust to use of grantor, void.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That every deed of gift, and conveyance of goods and chattels made, or to be made, in trust to the use of the person or persons, making the same deed of gift or conveyance, shall be, and is hereby declared to be void, and of no effect, unless such use or trust be expressed in such deed of gift, or conveyance.

Gifts, grants, or conveyances of lands, &c. with intent to defraud creditors and purchasers, declared void.

SEC. 2. *Be it further enacted*, That every gift, grant, or conveyance of land, tenements or hereditaments, goods or chattels, or any right of common, or profit issuing out of the same, by writing or otherwise, and every bond, suit, judgment or execution had, made, or contrived of malice, fraud, covin, collusion, or guile, to the intent, or for the purpose of delaying, hindering, or defrauding creditors of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures, or to defraud, or deceive those who shall purchase the same lands, tenements or hereditaments, or any rent, profit, or commodity issuing out of them, shall be from henceforth deemed and taken, (only as against the person or persons, his, her or their heirs, successors, executors, administrators or assigns, and every of them, whose debts, suits, demands, estate and interest by such guileful and covenous devices, and practices as aforesaid, shall, or might be in any wise disturbed or hindered, delayed or defrauded,) to be clearly and utterly void, any pretence, color, or feigned consideration, expressing of use, or any other matter or thing, to the contrary notwithstanding.

Gifts & conveyances of slaves, &c. not on valuable consideration, void, unless possesion accompany it.
Or the will or deed be acknowledged, &c.
Conveyances to take effect, when.
Loans, after five years possession.
Reservations and limitations, after five years possession;
Taken, as to creditors and purchasers, fraudulent, & the property with the possession
Unless there be a will or deed duly recorded, &c.
Actual fraud may be shown.
Subsequent creditors.

Sec. 3. *Be it further enacted*, That every gift of goods, chattels, and slaves, and all other conveyances of the same, not on consideration deemed valuable in law, shall be taken to be fraudulent within this act, unless possession shall really and bona fide accompany such gift or conveyance; or unless the same be by will duly proved and recorded, or by deed in writing acknowledged, proved and recorded in such manner as conveyances of lands are by law directed to be acknowledged, proved and recorded. And no such conveyance shall be deemed valid and binding, (except between the parties thereto, and their legal representatives) until the same shall have been deposited in the recorder's office for record; and in like manner where any goods, or chattels, or slaves, shall be pretended to have been loaned to any person with whom, or those claiming under him, possession shall have remained for the space of five years, without demand made, and pursued by due process of law, on the part of the pretended lender; or where any reservation or limitation, shall be pretended to have been made of any use of property, by way of condition, reversion, remainder, or otherwise, in goods and chattels, the possession whereof shall have remained in another, as aforesaid, the same shall be taken, as to creditors and purchasers of the persons, as aforesaid, so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possession, unless such loan, reservation, or limitation of use, or property, were declared by will, or deed in writing, proved and recorded as aforesaid; and even then the purchasers or creditors, may shew actual fraud, and on such fraud being established, every such gift, contract, sale, loan, or possession, shall be set aside in favor of such creditors, or purchasers. And the provisions of this section, shall also be extended to subsequent creditors, after such pretended gift, sale, contract, loan or conveyance.

This act not to extend to bona fide conveyances
Or to subsequent purchases.

Sec. 4. *Be it further enacted*, That this act shall not extend to any estate, or interest, in any lands, tenements or hereditaments, goods or chattels, or any rents, profits, or commons out of the same, which shall be upon valuable consideration, and bona fide and lawfully conveyed, as aforesaid, nor to any person or persons, body politic or corporate, who may be subsequent purchasers for valuable considerations without notice.

Leases not in writing, to

Sec. 5. *Be it further enacted*, That all leases, estates, interest of freehold, or term of years, or any uncertain interests, of, in, to or out of any messuages, lands, tenements or hereditaments made or created, or hereafter to be made or created by livery and seizen only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorised by writing, shall have the force and effect of leases or estates at will only, and shall not either in law or equity, be deemed or taken, to have any other or greater force or effect; any consideration for making any such parol, leases, or estates, or any former law or usage, to the contrary notwithstanding; except, nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term, shall amount unto two third parts at the least, of the full improved value of the thing demised.

operate only as leases at will.

Except leases not exceeding 3 years, in certain cases.

SEC. 6. *Be it further enacted*, That no leases, estates, interests, either of freehold, or terms of years, or any uncertain interest, of, in, to or out of any messuages, lands, tenements or hereditaments, except leases for a term not exceeding three years as above specified, shall at any time hereafter be assigned, granted or surrendered, unless it be by deed or note in writing signed by the party so assigning, granting, or surrendering the same, or their agents thereunto lawfully authorised by writing, or by act and operation of law.

Assignment and surrender of leases, &c. to be in writing.

SEC. 7. *Be it further enacted*, That all declarations, or creations of trusts, or confidences of any lands, tenements or hereditaments, shall be manifested and proved, by some writing signed by the party, who is, or shall be by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void, and of none effect, and in like manner all grants and assignments of any trust, or confidence, shall likewise be in writing, signed by the party granting or assigning the same, or by his or her last will in writing, or else shall likewise be utterly void, and of none effect: *Provided, always*, That where any conveyance hath been, or shall be made of any lands, tenements or hereditaments, by which a trust or confidence shall or may arise, or result by implication, or construction of law, or be transferred, or extinguished by act or operation of law, then and in every such case, such trust or confidence, shall be of the like force and effect, as the same would have been, if this act had not been made.

Declarations of trust and confidence of lands, &c. to be by will or writing.

Grants and assignments of trust, &c.

Proviso as to resulting trusts.

[*Approved, January 4th*, 1825.]

FREEDOM.

30 Dec.1824

AN ACT to enable persons held in slavery to sue for their freedom.

Persons held in slavery, how permitted to sue.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That it shall be lawful for any person held in slavery to petition the circuit court, or the judge thereof in vacation, praying that such person may be permitted to sue as a poor person, and stating the ground upon which his or her claim to freedom is founded; and if, in the opinion of the court or judge, the petition contains sufficient matter to authorize the commencement of a suit, such court or judge may make an order that such person be permitted to sue as a poor person to establish his or her freedom, and assign the petitioner counsel,—which order shall be endorsed on the petition. And the court or judge shall, moreover, make an order that the petitioner have reasonable liberty to attend his or her counsel and the court, when occasion may require; and that the petitioner shall not be taken or removed out of the jurisdiction of the court, nor be subject to any severity because of his or her application for freedom,—which order, if made in vacation, shall be endorsed on the petition, and a copy thereof endorsed on the writ and served on the defendant.

Order to prevent removal or improper restraint of petitioner.

In case of improper restraint, severe treatment, &c.

SEC. 2. *Be it further enacted*, That if the court, or the judge thereof in vacation, shall be satisfied, at the time of the presenting the petition, or at any time during the pendency of any suit instituted under the provisions of this act, that any petitioner hath been or is about to be restrained by any person from reasonable liberty of attending his or her counsel or the court, or that the petitioner is about to be removed out of the jurisdiction of the court, or that he or she hath been or is about to be subjected to any severity because of his or her application for freedom, or that any order made by the court or judge in the premises as aforesaid has been or is about to be violated, then and in every such case, the court, or the judge thereof in vacation, may cause the petitioner to be brought before him or them by a writ of *habeas corpus*; and shall cause the defendant, or the person in whose possession the petitioner may be found, his or their agent, to enter into a recognizance, with a sufficient security, conditioned that the petitioner shall at all times during the pendency of the suit have reasonable liberty of attending his or her counsel, and that such petitioner shall not be removed out of the jurisdiction of the court wherein the action is to be brought or is pending, and that he or she shall not be subjected to any severity because of his or her application for freedom,—which recognizance shall be recorded or filed among the records of the court,

Court or judge to issue habeas corpus, and require recognizance of defendant and be deemed and taken to all intents and purposes to be a record of such court. But if the party required to enter into a recognizance as aforesaid shall refuse so to do, the court or judge shall make an order that the sheriff take possession of the petitioner and hire him or her out to the best advantage, from time to time, during the pendency of the suit; and that he take a bond from the person hiring the petitioner, in such penalty as the court shall in such order direct, and with such security as the sheriff shall approve, conditioned as directed in the recognizance of the defendant, and moreover that he will pay the hire to the sheriff at the time stipulated, and return the petitioner at the end of the time for which he or she is hired, or sooner if the action shall sooner be determined; and the sheriff shall proceed accordingly, and pay the money received for hire to the party in whose favor the suit shall be determined.

Deft refusing to enter into recognizance, petitioner to be hired out.

Form of the action to be commenced.

Sec. 3. *Be it further enacted*, That all actions to be commenced and prosecuted under the provisions of this act, shall be in form, trespass, assault and battery, and false imprisonment, in the name of the petitioner, against the person holding him or her in slavery, or claiming him or her as a slave. And whenever any court or judge shall make an order as aforesaid, permitting any such suit to be brought, the clerk shall issue the necessary process, without charge to the petitioner: the declaration shall be in the common form of a declaration for assault and battery and false imprisonment, except that the plaintiff shall aver that before and at the time of the committing the grievances he or she was and still is a free person, and that the defendant held and detained him or her and still holds and detains in slavery,—upon which declaration the plaintiff may give in evidence any special matter; and the defendant may plead as many pleas as he may think is necessary for his defence, or he may plead the general issue, and give the special matters in evidence. And such actions shall be conducted in other respects in the same manner as the like actions between other persons, and the plaintiff may recover damages as in other cases.

Declaration.

Pleas.

Damages.

Petitioner to establish his or her freedom.

Sec. 4. *Be it further enacted*, That in all actions instituted under the provisions of this act, the petitioner, if he or she be a negro or mulatto, shall be held and required to prove his or her right to freedom; but regard shall be had not only to the written evidence of his or her claim to freedom, but to such other proofs, either at law or in equity, as the very right and justice of the case may require. And if the issue be determined in favor of the petitioner, the court shall render a judgment of liberation from the

Judgment.

defendant or defendants, and all persons claiming from, through or under him, her or them.

Appeal or writ of error allowed.

Sec. 5. *Be it further enacted*, That if any party to a suit instituted under the provisions of this act, shall feel him or herself aggrieved by the judgment of the circuit court, he or she may have and prosecute an appeal or writ of error to the supreme court, as in other cases: *Provided*, That if the petitioner appeal or prosecute a writ of error, he or she shall not be required to enter into a recognizance, but such appeal or writ of error shall operate as a *supersedeas* without such recognizance.

Petitioner not required to give recognizance.

This act shall take effect and be in force from and after the fourth day of July next.

[*Approved, December* 30, 1824.]

FUGITIVES FROM JUSTICE.

18 Dec. 1824.

AN ACT concerning Fugitives from Justice.

Upon demand regularly made, governor to issue his warrant.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That whenever the executive of any other state shall demand of the executive of this state, any person as a fugitive from justice, and shall have complied with the requisites of the act of congress in that case made and provided,* it shall be the duty of the executive of this state to issue his warrant, under the seal of the state, to apprehend the said fugitive, directed to any sheriff, coroner, constable, or other person, whom the said executive may think fit to entrust with the execution of the said process; and any of the said persons may execute such warrant any where within the limits of this state, and convey such fugitive to any place within this state, which the executive shall in his said warrant direct.

*Acts 2 sess. 2d congress, chap. 7; see also Cons. U. S. art. 4, sec. 2, ante p. 24.

How warrant to be directed, and by whom executed.

Governor to issue warrant for receiving fugitives from this state, when offered to be delivered up.

Sec. 2. *Be it further enacted*, That whenever the executive of this state shall demand a fugitive from justice from the executive of any other state, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of state, to some messenger, commanding him to receive the said fugitive, and convey him to the sheriff of the proper county where the offence was committed.

Expenses to be paid out of state treasury.

Sec. 3. *Be it further enacted*, That the expenses which may accrue under the two foregoing sections, being first ascertained to the satisfaction of the executive, shall, on his certificate, be allowed and paid out of the state treasury.

Offenders fleeing from

Sec. 4. *Be it further enacted*, That whenever any person within this state shall be charged, upon the oath or affirmation of any credible witnesses, before any judge or justice of the peace, with the commission of a felony in any other state or territory of the United States, and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person; and if upon examination it shall appear to the said judge or justice that the said person is guilty of the offence alleged against him, it shall be the duty of the said judge or justice to commit him to the gaol of the county, or if the offence is bailable, to take bail for his appearance at the next circuit court to be holden in that county. And it shall be the duty of the said judge or justice to reduce the examination of the prisoner and those who bring him to writing, and to return the same as in other cases; and shall also send a copy of the examination and proceedings to the executive of this state, so soon thereafter as may be. And if, in the opinion of the executive of this state, the examination so furnished contains sufficient evidence to warrant the finding an indictment against such person, he shall forthwith notify the executive of the state or territory where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand; and when such demand shall be made, the executive of this state shall forthwith issue his warrant, under the seal of the state, to the sheriff of the county where the said person is committed or bailed, commanding him to surrender to such messenger as shall be therein named, to be conveyed out of this state. And if the said person shall be out on bail, it shall be lawful for the said sheriff to arrest him forthwith, any where within the state, and to surrender him agreeably to said warrant.

other states, may be apprehended on warrant of judge or justice.

May be committed or bailed.

Examination to be reduced to writing, & certified to governor and to the circuit court.

Duty of governor.

Offender to be delivered up, on demand.

SEC. 5. *Be it further enacted*, That in cases where the party shall have been admitted to bail, and shall appear at the circuit court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of the said court to discharge the said recognizance, or continue it, according to the circumstances of the case, such as the distance of the place where the offence is alleged to have been committed, the time that hath intervened since the arrest of the party, the strength of the evidence against him, &c.: *Provided, however*, That in no case shall a party be held in prison, or to bail, longer than till the end of the second term of the circuit court after his caption; and if no demand is made upon the sheriff for him within that time, he shall be dis-

Circuit court may discharge or detain accused.

charged from prison, or exonerated from his recognizance, as the case may be.

Recognizance for the benefit of this state.

SEC. 6. *Be it further enacted*, That if the recognizance shall be forfeited, it shall enure to the benefit of this state.

Security to be taken for the payment of costs.

SEC. 7. *Be it further enacted*, That in all cases where complaint shall be made, as aforesaid, against any fugitive from justice, it shall be the duty of the judge or justice, to take good and sufficient security for payment of all the costs which may accrue from the arrest and detention of such fugitive, which security shall be by bond, to the clerk of the circuit court, conditioned for the payment of costs above, which bond, together with a statement of the costs which may have accrued on the examination, shall be returned to the office of the clerk of the circuit court, and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee bill as in other cases, to be served on the parties named in the bond, or any one of them, which fee bill shall be served and returned by the sheriff, for which he shall be allowed the same fees, as are given him for serving notices. And if the fees are not paid on or before the first day of the next circuit court, to be holden in, and for that county, nor any cause then shewn, why they should not be paid, the clerk may issue an execution for the same, against those parties on whom the fee bill has been served, and when the said fees are collected, shall pay over the same, to the persons respectively entitled thereto. And the clerk shall be entitled to fifty cents, for his trouble in each case, besides the usual taxed fees, which are allowed in other cases for like services: *Provided, however*, That nothing herein contained, shall prevent the clerk from instituting suits on said bonds, in the ordinary mode of judicial proceedings, if he shall deem it proper.

Costs how collected.

If not paid, execution to issue.

Fees of clerk.

Governor may offer reward for apprehending offenders in certain cases.

SEC. 8. *Be it further enacted*, That if any person charged with, or convicted of treason, murder, or other capital crimes, shall break prison, escape or flee from justice, and abscond and secrete himself, in such cases, it shall be lawful for the governor, if he shall judge it necessary, to offer any reward, not exceeding three hundred dollars, for apprehending and delivering such person into the custody of such sheriff, or other officers, as he may direct, and the person or persons, so apprehending and delivering any such person, as aforesaid, and producing to the governor, the sheriff or jailor's receipt for the body, it shall be lawful for the governor, to certify the amount of such claim to the auditor, who shall draw on the treasury for the same.

[*Approved, December* 18*th*, 1824.]

GAMING.

AN ACT to restrain Gaming.

30 Dec.1824.

Contracts, judgments, assurances, &c upon gaming consideration declared void.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That all promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages, or other securities or conveyances, made, given, granted, drawn or entered into, or executed, by any person or persons whatsoever, where the whole or any part of the consideration thereof shall be for any money, property, or other valuable thing, won by gaming or playing at cards, dice, or any other game or games, or by betting on the side or hands of any person gaming, or for the reimbursing or paying any money or property knowingly lent or advanced at the time and place of such play, to any person or persons so gaming or betting, or that shall during such play so play or bet, shall be void and of no effect.*

***Substantially as 9th Ann, chap 14.**

Person losing $10 at a time or sitting, may recover it back

SEC. 2. *Be it further enacted*, That any person who shall at any time or sitting, by playing at cards, dice, or any other game or games, or by betting on the side or hands of such as do game, lose to any one or more persons so playing or betting, any sum or sums of money, or other valuable thing, amounting in the whole to the sum of ten dollars, and shall pay or deliver the same or any part thereof, the person or persons so losing and paying or delivering the same shall be at liberty to sue for and recover the money, goods or other valuable thing so lost and paid or delivered, or any part thereof, or the full value of the same, by action of debt, detinue, assumpsit or trover, from the respective winner or winners thereof, with costs, in any court of competent jurisdiction; in which action it shall be sufficient for the plaintiff to declare generally, as in actions of debt or assumpsit for money had and received by the defendant to the plaintiff's use, or as in actions of detinue or trover upon a supposed finding and the detaining or converting the property of the plaintiff to the use of the defendant, whereby an action hath accrued to the plaintiffs according to the form of this act, without setting forth the special matter. And in case the person or persons who shall lose such money or other thing as aforesaid, shall not within six months, really and *bona fide*, and without covin or collusion, sue and with effect prosecute for such money or other things by him lost and paid or delivered as aforesaid, it shall be lawful for any other person to sue for and recover treble the value of the money, goods, chattels and other things, with costs of suit, by special action on the case against such winner or winners as aforesaid, one half to the use of the county and the other to the persons suing.

Form of action.

If the loser does not sue in 6 months, any other person may recover treble.

Judgments, contracts & assurances, may be set aside.

SEC. 3. *Be it further enacted*, That all judgments, mortgages, assurances, bonds, notes, bills, specialties, promises, covenants, agreements, and other acts, deeds, securities or conveyances, given, granted, drawn or executed contrary to the provisions of this act, may be set aside and vacated by any court of equity, upon bill filed for that purpose by the person so granting, giving, entering into or executing the same, or by his executors or administrators, or by any creditor, heir, devisee, purchaser, or other person interested therein; or if a judgment, the same may be set aside on motion of any person aforesaid, on due notice thereof given.

Assignment of securities, not to affect defence.

SEC. 4. *Be it further enacted*, That no assignment of any note, bill, bond, covenant, agreement, judgment, mortgage, or other security or conveyance as aforesaid, shall in any manner affect the defence of the person giving, granting drawing, entering into or executing the same, or the remedies of any person interested therein.

Parties suing under this act, entitled to discovery.

SEC. 5. *Be it further enacted*, That in all actions or other proceedings commenced or prosecuted under the provisions of this act, the parties shall be entitled to discovery as in other actions; and the person or persons so liable to be sued shall be obliged and compelled to answer, upon oath, such bill or bills as shall be preferred against him or them for discovering the sum or sums of money or other thing so won as aforesaid: *Provided*, That upon the discovery and repayment of the money or other thing so to be discovered and repaid, the person or persons who shall discover and repay the same as aforesaid shall be acquitted, indemnified and discharged from any other or further punishment, forfeiture or penalty, which he or they might have incurred by the playing for or winning such money or other thing so discovered or repaid as aforesaid.

Discovery & payment, a bar to prosecution.

[*Approved, December* 30, 1824.]

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GAOLS AND GAOLERS.

30 Dec.1824.

AN ACT concerning Gaols and Gaolers.

Gaols to be kept & maintained in each county.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That there shall be kept and maintained in good and sufficient condition and repair, a common gaol in each county within this state, to be located at the permanent seat of justice for such county.*

*See county buildings.

To be under custody and charge of sh

SEC. 2. *Be it further enacted*, That the sheriff of each county in this state, shall have the custody, rule, keeping and charge of the goal within his county, and of all prisoners in such gaol, and may appoint a gaoler under him for whose conduct he shall be responsible.

Gaoler may be appointed

Sec. 3. *Be it further enacted*, That it shall be the duty of the sheriff and gaoler to receive from constables and other officers, all persons who shall be apprehended by such constables or officers, for offences against this state, or who shall be committed to such gaol by any competent authority; and if any sheriff or gaoler shall refuse to receive any such person or persons, he shall be adjudged guilty of a misdemeanor, and on conviction, shall be fined at the discretion of the court.

Sheriff and gaoler to receive prisoners.

Refusal, a misdemeanor, punishable by fine.

Sec. 4. *Be it further enacted*, That it shall not be lawful for any sheriff or gaoler, to confine or keep debtors and criminals together, in the same room, but they shall be confined and kept separate and apart from each other, in distinct rooms when practicable.

Debtors and criminals to be kept separate.

Sec. 5. *Be it further enacted*, That every person who shall be committed to the common gaol, within any county in this state, by lawful authority, for any offence or misdemeanor, if he shall be convicted thereof, shall bear the expenses of conveying him or her to the said gaol, and also of his or her support while in gaol, before he or she shall be discharged; and the property of such person shall be subjected to the payment of such expenses, and shall be bound therefor, from the time of his commitment, and may be levied on, and sold from time to time under the order of the circuit court to satisfy such expenses: *Provided, however*, That the attorney prosecuting for and on behalf of the state, in such county, may, by and with the advice and consent of the circuit court, discharge from imprisonment any person convicted of an offence below the grade of felony, and holden only for the payment of fine and costs, who hath no property or means of satisfying the same. *Provided*, That before any such person shall be discharged, he shall take the oath and surrender his property and effects, as required by law, in the case of insolvent debtors, and the property and effects, which may be surrendered, shall be first applied to the payment of the fine and costs for which he was imprisoned.

Convicts to pay expenses of commitment and support in prison.

Prisoners detained for fine & costs only, may be discharged, how.

Sec. 6. *Be it further enacted*, That whenever any person committed to gaol upon any criminal process, under any law of this state, shall declare on oath that he is unable to buy or procure necessary food, the sheriff or gaoler shall provide such prisoner with food; for which he shall be allowed a reasonable compensation to be fixed by law. And if from the inclemency of the season, the sickness of the prisoner or other cause, the sheriff shall be of opinion that fuel, additional clothes or bedding, are necessary for

Poor prisoners in criminal cases, how provided for.

such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation.

Expenses of imprisonment, how paid.

SEC. 7. *Be it further enacted*, That the expenses of imprisonment of any criminal prisoner, such as accrue before conviction, shall be paid in the same manner as the other costs of prosecution are directed to be paid; and those which accrue after conviction, shall be paid as is directed by the act regulating criminal proceedings.

Prisoners (except convicts for felony) to have certain liberties.

Grand juries to examine gaols.

Duty of circuit court.

SEC. 8. *Be it further enacted*, That every sheriff and gaoler, and other person or persons whatsoever, to whose custody or keeping any person or persons shall be committed, by virtue of any writ or process, or for any criminal offence, except on conviction for felony, shall permit and suffer him, her, or them, so committed, at his, her, or their will and pleasure, to send for and have any cider, ale, beer, victuals, or other necessary drink, or food, from what place, and whom they please; and also to have and use such bedding, linen and other things, as he, she or they shall think fit, without detaining the same, or any part thereof, or enforcing or requiring him, her or them, to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them, in using thereof, or relating thereto. And it shall be the duty of the grand jury at each term, or a committee to consist of at least three members thereof, to visit the gaol of their county and examine the condition thereof, and enquire into the treatment of the prisoners, and make report thereof to the court. And it is hereby made the especial duty of the circuit court at each term, to enquire, and see that all prisoners, civil and criminal, are humanely treated.

Convicts sentenced to imprisonment, how kept, fed and clad.

SEC. 9. *Be it further enacted*, That all felons and other offenders, sentenced to imprisonment for one year or upwards, may, by direction of the court, in which the conviction takes place, be kept on bread and water for one week in each month during their imprisonment; and all such offenders shall, at the expense of the state, during the term of their imprisonment be clothed in habits of coarse materials, uniform in color and make, to be prescribed by the judges of the respective circuits, so as to have them uniform throughout the circuits, and, as far as may be, throughout the state. And the males shall have their hair cut short once a month, and one half of their heads shaven, so that they may the more easily [be] identified in cases of escape. And all such offenders shall for the whole term of their imprisonment be kept upon inferior but wholesome food, and be put to hard and servile labor, so far as may be. And all spirituous liquors shall be prohibited to them unless by the direction of some reputable physician.

Sec. 10. *Be it further enacted,* That when any person is confined in gaol, or within the prison bounds thereof, on execution or mesne process, or on surrender by his bail in any civil suit, and shall be unable to maintain himself, the plaintiff at whose suit such person may be imprisoned, shall pay for his maintenance at the rate of thirty-seven and a half cents per day, to be paid to the sheriff or gaoler to furnish such prisoner with provisions to the full amount thereof. And in case the said plaintiff shall refuse by himself, agent or attorney, to pay the money as aforesaid, and shall be in arrear for two weeks, the sheriff or gaoler may discharge the prisoner and recover the same together with his costs, before any justice of the peace having jurisdiction thereof, in the same manner as other debts are collected before a justice of the peace: *Provided, however,* That the plaintiff shall always be entitled to recover from the debtor in an action of debt, or on promise, the full amount of such money he may have paid for his maintenance, out of any property that he may thereafter possess.

Prisoners for debt to be maintained by plaintiff, if unable to maintain himself.

Sec. 11. *Be it further enacted,* That it shall be the duty of the keeper of the jaol in every county, within this state, to receive into his custody any prisoner or prisoners, who may be from time to time committed to his charge, under the authority of the United States, and to safely keep every such prisoner or prisoners, according to the warrant or precept of such commitment, until he or they shall be discharged by due course of the laws of the United States.

Prisoners committed under the authority of United States

Sec. 12. *Be it further enacted,* That the keeper of every gaol aforesaid, shall be subject to the same pains and penalties, for any neglect or failure of duty herein, as he would be subject to by the laws of this state, for the like neglect or failure, in the case of a prisoner committed under the authority of the said laws: *Provided, always,* That the United States do pay, or cause to be paid for the use and keeping of such gaols, at the rate of fifty cents per month for each person that shall under their authority be committed thereto, and also to the gaoler, such fees as he would be entitled to for like services rendered, in virtue of the existing laws of this state, during the time such prisoner shall be therein confined, and moreover do support such of the said prisoners as shall be committed for offences.

Failure of duty in case of the U. S. prisoners.

U. S. to pay for use of gaols.

Gaoler's fees

Sec. 13. *Be it further enacted,* That whenever the sheriff of any county in this state shall be of opinion that the gaol of his county is insufficient to secure the prisoners that shall be confined therein, it shall be his duty to give notice thereof to the tribunal established by law for the transaction of county business; and the said tribunal, if they cannot immediately repair the same, may, if they deem it

Gaol insufficient, or out of repair, how repaired

Deputy gaoler may be appointed.

expedient, allow any sum not exceeding one hundred and fifty dollars per annum for the pay of a deputy gaoler for such county, for so long a time as they may see cause for it; and may make similar orders and revoke them, agreeable to their discretion, and as, in their opinion, the cases may require: *Provided*, That such deputies shall be appointed by the sheriffs, and shall be under their sole direction, and be removable by them at pleasure. And, also, whenever any sheriff shall have in his custody any person or persons charged with any capital offence against the laws of this state, and the gaol of his county shall be insufficient, or if there shall be no gaol in his county, he may, by and with the advice and discretion of any of the judges of the circuit or supreme court, or of any two justices of the peace of his county, employ a guard, sufficient for the guarding and safe keeping of such prisoner or prisoners in his own county: the said guard not to exceed, however, in any instance, more than three persons. The expenses of said guard to be audited and paid as other county expenses.

If gaol insufficient, guard may be employed to guard prisoners in capital cases.

Where there is no gaol, or insufficient one, prisoners may be committed to the jail of some other county.

SEC. 14. *Be it further enacted*, That it shall be lawful for the sheriff of any county of this state, where there shall happen to be no gaol, or when the gaol of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest gaol of some other county in the same circuit; and it is hereby made the duty of the sheriff or keeper of the gaol of said county to receive such person or persons so committed as aforesaid, and him, her or them safely keep, subject to the order or orders of the circuit judge for the said circuit.

Prisoners committed to the gaol of a different cty. notice to be given to judge.

SEC. 15. *Be it further enacted*, That it shall be the duty of the sheriff, so committing any person or persons as aforesaid for any criminal offence, forthwith to notify the circuit judge for the circuit where such person or persons so committed is or are to be tried, of the committing of such person or persons to the gaol of such other county, and transmit, at the same time, to such circuit judge, a copy of the day and cause of the caption and detention of such person or persons; whereupon it shall be the duty of such circuit judge, within fifteen days next preceding the first day of the circuit court of the county where such person or persons is or are to be tried, to issue a writ or writs of *habeas corpus*, directed to the sheriff or keeper of the gaol of the county where such person or persons is or are committed, commanding him or them to have the body or bodies of such person or persons thus committed, together with the day and cause of his, her or their caption and detention before the cir-

To be removed for trial by habeas corpus.

cuit court of the said county for the trial of such offences, on the first day of the then next term of the said court; and it shall be the duty of the said sheriff or keeper of the gaol, to bring or cause to be brought the said person or persons thus committed as aforesaid, on the day and at the place mentioned in the said writ. And any sheriff or keeper of the gaol as aforesaid, failing or neglecting to make return as aforesaid, and to bring the body or bodies of said person or persons according to the command in the said writ, shall be deemed guilty of a contempt to the said court, and shall be liable to be attached and committed to the gaol of the county, there to remain, without bail or mainprize, until he shall obey said writ; and shall, moreover, forfeit to the prisoner or party grieved a sum not exceeding five hundred dollars, to be apportioned, according to the nature, aggravation and circumstances of the case, and the injury which the party aggrieved may sustain thereby, to be recovered by the prisoner or party grieved, his executors or administrators, in an action on the case, founded upon this statute; and the said sheriff or keeper of the gaol may also, in the discretion of the said court, be removed from office, and rendered incapable of holding or executing the same thereafter. The sheriff for committing any prisoner as aforesaid, or for executing any writ of *habeas corpus* under this act, shall be entitled to the like fees as are provided by law for similar services.

Sheriff or keeper failing to obey writ, punished as for contempt.

Liable to party aggrieved.

Sec. 16. *Be it further enacted*, That in all cases where a person is committed from another county, for a criminal offence under this act, such county, or the prisoner, or the state, shall pay the expenses, in the same manner as if the commitment had been in the county where the offence was committed; and in civil suits, the plaintiff or defendant shall pay the expenses, in the same manner as if the imprisonment had taken place in the county where the suit was commenced.

Prisoners committed from another county, how expenses paid.

Sec. 17. *Be it further enacted*, That the sheriff may be imprisoned in the gaol of his own county; and for the time that he shall be confined within the walls of the prison, the coroner shall have the custody, rule, keeping and charge of the said gaol, and shall, by himself and his securities, be answerable for the faithful discharge of his duties in that office.

Sheriff may be imprisoned in the gaol of his county

This act shall take effect and be in force from and after the passage thereof.

[*Approved*, *December* 30, 1824.]

GUARDIAN AND WARD.

8th Feb. 1825

AN ACT concerning Minors, Orphans and Guardians.

Minors, above 14 years, to choose guardians; under that age, court to appoint them.

Minor orphans above 14, required to choose guardians; failing to do so, court to appoint.

Choice of guardian as to religious persuasion.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That the courts of probate, in their respective counties shall, as often as there may be occasion, admit orphans or minors above the age of fourteen years to make choice of guardians, and appoint guardians for such as are under the age of fourteen years. And whenever it shall be represented to the said court that any orphan minor above the age of fourteen has not a guardian, it shall be the duty of the said court to issue a notification to such minor to appear before the said court, at time certain, to be therein specified, and choose a guardian; or that the court will appoint one for him; and if such minor shall refuse or neglect to appear, or, appearing, shall refuse or neglect to choose a guardian, the said court shall appoint one for such minor, according to law, as if said minor were under the age of fourteen years: *Provided, however*, That the said court shall not commit the guardianship of any minor to a person of a different religious persuasion from that which the parents of such minor professed at the time of their decease, (if proper persons of the same religious persuasion may or can be found) unless such minor shall have arrived at the age of fourteen years, and shall give consent thereto.

Minor owning property, and having a father living, guardian to be appointed

SEC. 2. *Be it further enacted*, That where a minor, having a father living, shall be entitled to or possessed of any estate, real or personal, not derived from his or her father; the said court of probate, whenever there shall be occasion, shall notify the father to appear and show cause why a guardian for such minor should not be appointed; and if sufficient reasons are not shown, may appoint the father, if a proper person; if not, then such other person as the said minor may choose, if of age to choose a guardian: but if such minor shall refuse or neglect to make choice, or be not of sufficient age, then the said court shall appoint such person to be guardian as it shall deem proper. And where any person is appointed guardian, other than the father, he shall have the charge and management of the estate of the minor, but no control over his person; nor shall the rights of the father over the person of the minor in any wise be affected by such appointment of guardian.

Guardians to give bond.

SEC. 3. *Be it further enacted*, That the said court shall take of each guardian appointed under this act, bond and security, in double the amount of the value of the minor's estate, conditioned for the faithful discharge of the office of such guardian, according to law; which bond shall be taken in the name of the state of Missouri, to the use of such minor. The said court shall also have power to compel such guardian to give supplementary security, whenever it shall judge proper; and in default thereof, to remove such guardian. And in all cases, the said court shall have power to remove guardians for good and sufficient reasons shown, and to appoint others in their place, who shall give bonds for the faithful discharge of their duties as aforesaid.

Additional security may be required.

Guardians may be removed.

SEC. 4. *Be it further enacted*, That every orphan or minor who has not estate sufficient for maintenance, may, by consent of the court of probate, be bound apprentice by his or her guardian, until the age of twenty-one years if a male, or until the age of eighteen years if a female, to some master or mistress, who shall covenant to teach the apprentice some art, trade or business, to be particularized in the covenant, and also reading and writing; and if a male, common arithmetic, including the Rule of Three.*

Minors without estate to be bound apprentices.

*See also title Apprentices.

SEC. 5. *Be it further enacted*, That all guardians, duly appointed, shall be allowed and received, without further admittance, to prosecute and defend for their wards as occasion may require.

Guardians admitted to appear for their wards.

SEC. 6. *Be it further enacted*, That it shall be the duty of the guardians to put to interest the money of their wards, upon mortgage security, to be approved of by the said court; which letting shall always be for one year, and at the end of each year the interest shall be reduced to and made part of the principal; or the said guardians may, by leave of the said court, retain in their own hands the money of their wards, paying annual interest therefor. If no person can be found willing to take the said money at interest, and the said guardian is unwilling to pay interest for the same, then the said guardian shall be responsible for the principal money only, until it can be put out at interest as aforesaid.

Money of minors to be loaned out; security to be taken.

If money cannot be loaned, guardian responsible for principal only.

SEC. 7. *Be it further enacted*, That it shall be lawful for any guardian of any minor, who is committed to his or her care or tuition, and who has lands or tenements, for the purpose of education, to apply to the court of probate of the proper county for leave to sell the said lands, or tenements, or such part thereof as may be necessary to complete the education of such minor, or to mortgage the same for any sum not less than two thirds of the real value, as the said court shall think proper. And the said court shall from time to time, as the circumstances of the minor's estate will justify, direct and order the education of such minor,

Sale or mortgage of ward's real estate, may be made, by order of court.

Appropriations to be made for education.

Guardian to account on oath.

and shall appropriate such sums therefor, as may be necessary, out of said minor's estate; and it shall be the duty of guardians when they make their annual settlements, as is hereinafter directed, to make a statement under oath of the application of any money, that may have been directed by the court to be applied by them to the education of any minor, ward, or person committed to their care for tuition. And if any guardian shall refuse to make such statement as aforesaid, he shall be considered delinquent for such sums as he shall refuse thus to account for, and shall be proceeded against, as is hereinafter directed, in other cases of delinquent guardians.

Guardian to make annual settlement.

*Title Administration, sec 59.

Final settlement, when made.

How settlements compelled.

SEC. 8. *Be it further enacted*, That it shall be the duty of all guardians to make annual settlements with the court of probate, of their guardianship, at the first term of the said court, which shall happen after the expiration of one year from the date of the appointment of such guardian; and in like manner, at the corresponding terms of the said court in every year, thereafter, during the continuance of such guardianship, and shall give the same notice of such settlement, as is required of executors or administrators in their annual settlements,* and whenever any ward shall have arrived at the age of twenty one years, the said guardian shall make final settlement of his guardianship, and pay over all moneys belonging to his or her ward. And if any guardian shall fail or neglect to make settlement as is required by this act, he shall be liable to be attached and imprisoned, until he make such settlement.

Receipts and discharges given by guardian, valid.

Proviso.

SEC. 9. *Be it further enacted*, That if any guardian shall give discharges for any debts, rents, duties or sums of money, belonging to any minor or orphan for whom they were or are interested, all such discharges or receipts shall be binding upon the orphan or minor, when he or she attains his or her full age: *Provided*, That nothing herein contained, shall discharge any guardian, as aforesaid, from accounting to such minor, where such receipt or discharge may not have been legally given, or shall have been given for a fraudulent purpose.

Guardians how finally discharged.

SEC. 10. *Be it further enacted*, That when any minor shall have arrived at the age of twenty one years, and shall have received from his or her guardian, his or her full dues, it shall be the duty of such minor or ward to acknowledge satisfaction in the said court; but if any such minor or ward shall refuse so to do, then the said court shall certify how such guardian has accounted and paid, which accounting and payment, if done to the satisfaction of the court, shall be a sufficient discharge to the said guardian.

Appeals.

SEC. 11. *Be it further enacted*, That appeals shall lie from the judgment and decision of the probate court, to the circuit court, in the cases of guardians and wards, the same as in other cases cognizable in the said probate court.

[*Approved, February* 8*th*, 1825.]

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HABEAS CORPUS.

AN ACT regulating the proceedings on writs of Habeas Corpus. 19 Feb.1825.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That if any person shall be, or stand committed or detained for any criminal or supposed criminal matter, unless for treason or some capital offence, the species whereof is plainly and fully set forth in the warrant of commitment, it shall and may be lawful for him to apply to the supreme or circuit courts in term time, or any judge thereof in vacation, for a writ of *habeas corpus*, which application shall be in writing and signed by the prisoner, or some person on his or her behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy had been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. And the said court or judge to whom the said application shall be made, shall forthwith award the said writ of *habeas corpus*, unless it shall appear from the petition itself, or from the documents annexed, that the party can neither be discharged, nor admitted to bail, nor in any other manner relieved; which said writ if issued by the court shall be under the seal of the court, if by a judge, under the hand of the judge, and shall be directed to the person in whose custody the prisoner is detained, and be made returnable forthwith; and to the intent that no officer, sheriff, gaoler, keeper, or other person, to whom such writ shall be directed, may pretend ignorance thereof, every such writ shall be endorsed with these words, "By the *habeas corpus* act;" and whenever the said writ, shall by any person be served upon the sheriff, gaoler, keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under officers or deputies, at the gaol or place where the prisoner is detained, he, or some of his under officers or deputies, shall, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the court or judge awarding the said writ, and endorsed thereon, not exceeding ten cents per mile, and upon sufficient security

How obtained on commitment for a criminal, or supposed criminal matter.

Application to court or judge in writing.

How issued and directed; when returnable.

Form of the writ.

Service.

Charges paid or tendered, return to be made.

given to pay the charges of carrying him back, if he shall be remanded; make return of such writ, and bring, or cause to be brought, the body of the prisoner before the court or judge who granted the said writ, or in case of the adjournment of the said court, or absence of the judge, then before any other of the judges aforesaid, and certify the true cause of his imprisonment, within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable, and if beyond the distance of twenty miles, and not above one hundred miles, then within ten days, and if beyond the distance of one hundred miles, then within twenty days, after the delivery of the writ, as aforesaid, and not longer.

Within what term to be returned.

How obtained, where imprisonment is not for a criminal matter.

SEC. 2. *Be it further enacted*, That where any person, not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his or her liberty under any colour or pretence whatever, he or she may apply for a writ of *habeas corpus* as aforesaid, which application shall be in writing, signed by the party or some person on his or her behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she is detained; which application or petition shall be verified by the oath or affirmation of the party applying, or some person on his or her behalf, and if the confinement or restraint is by virtue of any judicial writ or process or order, a copy thereof shall be annexed thereto, or an affidavit made, that the same had been demanded and refused; and the same proceedings shall thereupon be had in all respects as is directed in the preceding section.

Petition to be verified by affidavit.

On return, a day to be set for hearing.

Return may be traversed.

Return may be amended.

Proceedings to be summary.

SEC. 3. *Be it further enacted*, That upon the return of the writ of *habeas corpus*, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time; and the said prisoner may deny any of the material facts set forth in the return, or may allege any fact to shew either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge, which allegations or denials shall be on oath: the said return may be amended by leave of the court or judge before or after the same is filed, as also may all suggestions made against it, that thereby material facts may be ascertained; the said court or judge, shall proceed in a summary way to settle the said facts, by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner, and the person who holds him in custody, and shall dispose of the prisoner as the case may require. But if it appear that the prisoner is in custody by virtue of process, from any court legally constituted, he can be discharged only for some one of the following causes: first, where the court has exceeded the limits of its jurisdiction, either as to matter, place, sum, or person; second, where, though the original imprisonment was lawful, yet, by some act, omission or event, which has subsequently taken place, the party has become entitled to his discharge; third, where the process is defective in some substantial form, required by law; fourth, where the process, though in proper form, has been issued in a case, or under circumstances, where the law does not allow process or orders for imprisonment, or arrest, to issue; fifth, where, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner, under such process, is not the person empowered by law to detain him; sixth, where the process appears to have been obtained by false pretence or bribery; seventh, where there is no general law nor any judgment, order, or decree of a court, to authorize the process, if in a civil suit, nor any conviction if in a criminal proceeding. But no court or judge on the return of a *habeas corpus*, shall in any other matter, enquire into the legality or justice of a judgment or decree of a court, legally constituted; and in all cases where the imprisonment is for a criminal or supposed criminal matter, if it shall appear to the said court or judge, that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been executed by a person not duly authorized, the court or judge shall make a new commitment, in proper form, and directed to the proper officer, or admit the party to bail, if the case be bailable.

Prisoners in custody on process, &c. can be discharged only for certain specified causes.

Judgments, &c. of legal courts not to be enquired into.

Nor prisoner discharged on account of informality.

SEC. 4. *Be it further enacted*, That when any person who shall stand committed for any criminal or supposed criminal matter, shall obtain his writ of *habeas corpus*, it shall be the duty of the sheriff or other person to whom the same shall be directed, to return, together with said writ, all and every examination and information in his hands, possession, custody or charge, relating to the offence with which the prisoner is charged; or if the examination has not been returned to the sheriff or person having the custody of such prisoner, it shall be the duty of the sheriff or other person, upon whom the said writ of *habeas corpus* shall be served, to shew the same to the magistrate who made the commitment, or to the clerk of the court, if the papers relative to the said commitment have been deliver-

Return to be accompanied by examination in criminal cases.

If no examination returned, proceedings.

ed to him, and it shall thereupon be the duty of the said magistrate or clerk, to deliver over to the sheriff or other person having to make return to such writ, the examination, information and proofs relative to the said commitment, and in default thereof to attend in person, before the said court or judge issuing the said writ, at the time and place of the return thereof, on pain of being attached; and such examination and information being taken and certified according to law shall be read in evidence by the said court or judge, on the hearing of the cause of imprisonment or detainer, and be re-delivered to the sheriff or other person from whom the same were received.

Where the offence is clearly stated in commitment, what examination to be had.

SEC. 5. *Be it further enacted*, That where the offence with which the prisoner is charged, is clearly and specifically set forth in the warrant of commitment, the court or judge before whom the writ of *habeas corpus* shall be returned, shall not go into any other or further evidence, for or against the prisoner, than is furnished or afforded by the examination and information aforesaid; unless it shall so happen that the magistrate making the commitment, shall have failed to reduce the examination and information to writing, or to certify the same according to law, in which case the said magistrate may, at the instance of the prisoner, be examined as to the evidence before him, on which the commitment was founded, and thereupon the said court or judge, shall remand to prison, admit to bail, or discharge as the circumstances of the case shall require; but in the absence of all such evidence as aforesaid, the said prisoner shall not be discharged, but shall be admitted to bail, if the offence mentioned in the said warrant of commitment be bailable, or remanded to prison, if it be not bailable, or being bailable, the prisoner shall refuse to give the bail required.

When prisoner shall not be discharged.

Recognizance of bail, how taken on habeas corpus.

SEC. 6. *Be it further enacted*, That when any person shall be admitted to bail on *habeas corpus*, he shall enter into recognizance, with one or more sureties, in such sum as the said court or judge shall direct, having regard to the circumstances of the prisoner and the nature of the offence, conditioned for his or her appearance at the next circuit court to be holden in and for the county where the offence was committed, or where the same is to be tried. And where any court or judge shall admit to bail, or remand, any prisoner brought before him or them on any writ of *habeas corpus*, it shall be the duty of the said court or judge to bind all such persons as do declare any thing material to prove the offence with which the prisoner is charged, by recognizance, to appear at the proper court having cognizance of the offence, on the first day of the

Condition.

Witnesses to enter into recognizance.

next term thereof, to give evidence touching the said offence, and not to depart the said court without leave; which recognizance so taken, together with the recognizance entered into by the prisoner (when he is admitted to bail,) shall be certified, and returned to the proper court, on the first day of the next succeeding term thereof. And if any such witnesses shall neglect or refuse to enter into a recognizance as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to gaol until he shall enter into such recognizance, or be otherwise discharged by due course of law; and if any judge shall neglect or refuse to bind any such witness or prisoner by recognizance as aforesaid, or to return any such recognizance when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

Recognizances to be certified and returned.

Witness refusing to give recognizance.

Failure to take and return recognizance.

Prisoner remanded, examination to be returned.

SEC. 7. *Be it further enacted*, That where any prisoner brought up on *habeas corpus* shall be remanded to prison, it shall be the duty of the court or judge remanding him, to make out and deliver to the sheriff, or other person to whose custody he shall be remanded, an order in writing, stating the cause or causes of remanding him. And if such prisoner shall obtain a second writ of *habeas corpus*, it shall be the duty of such sheriff, or other person to whom the same shall be directed, to return therewith the order aforesaid; and if it shall appear that the said prisoner was remanded for an offence adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

Prisoner obtaining a 2d writ, not to be discharged.

SEC. 8. *Be it further enacted*, That it shall not be lawful for any court or judge, on a second writ of *habeas corpus* obtained by the said prisoner, to discharge such prisoner, if he is clearly and specifically charged in the warrant of commitment with a criminal offence; but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail where the offence is bailable by law, or remand him to prison where the offence is not bailable, or, being bailable, where such prisoner shall fail to give the bail required.

Persons discharged, not to be again imprisoned for same cause.

SEC. 9. *Be it further enacted*, That no person who has been discharged by order of a court or judge on a *habeas corpus*, shall be again imprisoned, restrained or kept in custody for the same cause, unless he be afterwards indicted for the same offence, or unless by the legal order or process of the court wherein he is bound by recognizance to appear. But it shall not be deemed to be the same cause,—*First*, If after a discharge for defect of proof, or any material defect in the commitment in a criminal case,

What not deemed same cause.

the prisoner should be again arrested on sufficient proof, and committed by legal process for the same offence: *Second*, If in a civil suit the party has been discharged for any illegality in the judgment or process, and is afterwards imprisoned by legal process for the same cause of action: *Third*, Generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law,—the party may be a second time imprisoned, if the cause be legal and the forms required by law observed.

In what cases prisoners shall not be discharged.

SEC. 10. *Be it further enacted*, That no person shall be discharged under the provisions of this act, who is in custody under a commitment for any offence exclusively cognizable by the courts of the United States, or by order, execution or process issuing out of such courts in cases where they have jurisdiction, or who is held by virtue of any legal engagement, or enlistment in the army, or who, being subject to the rules and articles of war, is confined by any one legally acting under the authority thereof, or who is held as prisoner of war under the authority of the United States, or who is in custody for any treason, felony or other high misdemeanor committed in any other state or territory of the United States, and who by the constitution and laws of the United States ought to be delivered up to the executive power of such state or territory; nor shall any negro or mulatto, held as a slave within this state, try his right to freedom, or be discharged from slavery, under the provisions of this act, but for that purpose shall be put to his suit for freedom.

Negroes and mulattoes claiming freedom.

When prisoner shall be discharged, for want of speedy trial.

SEC. 11. *Be it further enacted*, That if any person shall be committed for criminal or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offence, the prisoner shall be set at liberty by the court, unless the delay shall happen on the application of the prisoner: *Provided, however*, That if such court, at the second term, shall be satisfied that due exertions have been made to procure the evidence for and on behalf of the state, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term; and if any such prisoner shall have been admitted to bail for a crime, other than a capital offence, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation, that the witnesses for the state (mentioning their names, and showing wherein they are material) are absent.

SEC. 12. *Be it further enacted*, That to prevent any per-

Prisoners not to be removed from one county to another, in certain cases.

son from avoiding or delaying his trial, it shall not be lawful to remove any prisoner, on *habeas corpus* under this act, out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried, except it be to convey him or her into the county where the offence with which he or she stands chargeable is properly cognizable.

Prisoners not to be removed from one prison to another, unless by legal writ.

Sec. 13. *Be it further enacted*, That any person, being committed to any prison, or in the custody of any officer, sheriff, gaoler, keeper, or other person, or his under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison or custody into any other prison or custody, unless it be by *habeas corpus* or some other legal writ, or where the prisoner shall be delivered to the constable or other inferior officer to be carried to some common gaol, or shall be removed from one place to another within the county in order to his discharge or trial in due course of law, or in case of sudden fire, infection or other necessity, or where the sheriff shall commit the said prisoner to the gaol of an adjoining county for the want of a sufficient gaol in his own county, as is provided in the act concerning gaols and gaolers, or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of any of the United States or territories. And if any person or persons shall, after such commitment as aforesaid, make out, sign or countersign any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or party grieved, a sum not exceeding three hundred dollars, to be recovered by the prisoner or party grieved, in the manner hereafter mentioned.

Or in case of necessity.

Penalty.

Refusal to issue writ.

Sec. 14. *Be it further enacted*, That any judge empowered by this act to issue writs of *habeas corpus*, who shall refuse to issue such writ when legally applied to in a case where such writ may lawfully issue, or who shall unreasonably delay the issuing of such writ, shall for every offence forfeit to the prisoner or party grieved a sum not exceeding one thousand dollars.

Penalty.

Refusal to obey writ & make return.

Sec. 15. *Be it further enacted*, That if any officer, sheriff, gaoler, keeper, or other person, to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of the said writ, within the respective times aforesaid, all and every such officer, sheriff, gaoler, keeper, or other person, shall be guilty of a contempt to the court or judge who issued said writ; whereupon the said court or judge may and shall issue an

Punishable as a contempt.

attachment against such officer, sheriff, gaoler, keeper, or other person, and cause him or them to be committed to the gaol of the county, there to remain, without bail or mainprize, until he or they shall obey the said writ; and such officer, sheriff, gaoler, keeper, or other person, shall also forfeit to the prisoner or party grieved a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

Removing prisoner to avoid habeas corpus.

SEC. 16. *Be it further enacted*, That any one having the person in his custody, or under his restraint, power or control, for whose relief a writ of *habeas corpus* is issued, who, with intent to avoid the effect of such writ, shall transfer such person to the custody, or place him under the control of another, or shall conceal him or change the place of his confinement, with intent to avoid the operation of such writ, or with intent to remove him out of the state, shall forfeit for every such offence one thousand dollars, and may be imprisoned not less than one year nor more than five years; and in any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of *habeas corpus* had issued at the time of the removal, transfer or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

Punishable by fine and imprisonment.

Refusing copy of commitment, &c.

SEC. 17. *Be it further enacted*, That any sheriff or his deputy, any gaoler, or coroner, having custody of any prisoner committed on any civil or criminal process of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment, by virtue of which he is imprisoned, within six hours after demand made by said prisoner or any one on his behalf, shall forfeit five hundred dollars.

Penalty.

Penalty for arresting person discharged.

SEC. 18. *Be it further enacted*, That any person who, knowing that another has been discharged by order of a competent judge or tribunal on a *habeas corpus*, shall, contrary to the provisions of this act, arrest or detain him again for the same cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offence, and one thousand dollars for the second offence.

Penalties, how recovered and appropriated.

SEC. 19. *Be it further enacted*, That all the pecuniary forfeitures incurred under this act, shall enure to the use of the party for whose benefit the writ of *habeas corpus* issued, and shall be sued for and recovered, with costs, by the attorney-general or circuit attorney, in the name of the state, by information; and the amount, when recovered, shall without any deduction be paid to the party entitled thereto.

Action not to abate by death of either party.

Sec. 20. *Be it further enacted*, That the right of action for the recovery of any of the penalties aforesaid shall not cease by the death of either of the parties, but such penalties may be sued for and recovered, to the use of the executors or administrators of the party aggrieved, against the offender, his executors or administrators.

Defendant may plead general issue, &c.

Sec. 21. *Be it further enacted*, That in any action or suit for any offence against the provisions of this act, the defendant or defendants may plead the general issue, and give the special matter in evidence.

Recovery of penalties, no bar to civil action.

Sec. 22. *Be it further enacted*, That the recovery of the said penalties shall be no bar to a civil suit for damages.

Habeas corpus to testify or surrender in discharge of bail.

Sec. 23. *Be it further enacted*, That the supreme court and circuit courts, within this state, shall have power to issue writs of *habeas corpus* for the purpose of bringing the body of any person confined in any gaol within the same before them, to testify, or be surrendered in discharge of bail. And when a writ of *habeas corpus* for the purpose of bringing into court any person to testify, or the principal to be surrendered in discharge of bail, and such principal or witness shall be confined in any gaol in this state, out of the county in which such principal or witness is required to be surrendered or to testify, the writ may run into any county in this state, and there be executed and returned by any officer to whom it shall be directed; and the principal, after being surrendered or his bail discharged, or a person testifying as aforesaid, shall, by the officer executing such writ, be returned to the gaol from whence he was taken by virtue of an order of the court for the purposes aforesaid, an attested copy of which, lodged with the gaoler, shall exonerate such gaoler from being liable for an escape: and the party praying out such writ of *habeas corpus*, shall pay to the officer executing the same such reasonable sum for his services as shall be adjudged by the courts respectively.

Two justices of the peace may issue writs of habeas corpus, but prisoner may be removed before a judge.

Recognizance to be taken.

Sec. 24. *Be it further enacted*, That two justices of the peace shall have the same power to issue writs of *habeas corpus*, and to determine the same, as is given by this act to a judge: *Provided, however*, That upon the return of any writ of *habeas corpus* before such justices of the peace, the party in whose custody or at whose instance the prisoner is detained, may remove the proceedings before the nearest judge within the same judicial district. And upon the removal of any such proceedings, the justices shall endorse on the writ that the same is removed before ——— judge of the ——— court, and shall affix the date of such removal, and shall, moreover, take a recognizance of the person having the custody of such prisoner, to the state of

Missouri, in the sum of one thousand dollars, conditioned that he will forthwith convey the said prisoner before the said judge, together with the said writ,—which recognizance shall be returned into the office of the clerk of the circuit court of the county where the proceedings originated. And it shall be the duty of the said person having the custody of the prisoner immediately to convey him before the said judge, or to the usual place of residence of the said judge; and if the said judge cannot be found without producing delay, or, if found, cannot hear and determine the said cause, it shall be the duty of the said person having custody of the prisoner forthwith to convey him before some other judge in the same district, or to return him without delay before the said justices who issued the writ. And any judge before whom the said prisoner shall be carried as aforesaid, shall have the same power to proceed on the said writ as if he had issued the same; and the said judge shall return the writ, and his proceedings thereon, into the office of the clerk of the circuit court of the county where the writ issued. Every failure, neglect or unnecessary delay in complying with the requisitions of this section, on the part of the person having the custody of the said prisoner, shall be deemed a forfeiture of his aforesaid recognizance. And all the penalties and provisions of the foregoing act, shall attach to proceedings under this act commenced before justices of the peace, in the same manner as if they had been commenced before a judge. The costs of removing any proceeding under this section shall be paid by the applicant for such removal.

[*Approved, February* 19, 1825.]

HORSES.

22 Dec. 1824.

AN ACT to prevent Seed Horses from running at large.

Seed horses not suffered to run at large.

Penalty.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri,* That it shall not be lawful for any seed horse or stallion over the age of eighteen months, to run at large within this state. And if any such horse or stallion shall be found running at large, the owner or owners thereof shall, upon conviction before any court having cognizance thereof, be fined for the first offence, any sum not exceeding three dollars; for the second offence, a sum not exceeding six dollars, and for each offence thereafter, a sum not exceeding ten dollars, to be recovered in an action of debt founded on this statute, in the name of any person who will sue for the same, the one half of which fine shall go to the use of the person prosecuting, and the other half, to the use of the county where the said offence was committed.

Found running at large, how dealt with.

SEC. 2. *Be it further enacted*, That it shall be lawful for any person to take up any seed horse or stallion above the age of eighteen months, which may be found running at large, and if not claimed within five days, may castrate him or cause him to be castrated, for which he shall be allowed three dollars, to be recovered of the owner in an action of debt, before a justice of the peace, as other small debts are recovered: *Provided, always*, That the operation of castrating shall be performed in the usual manner, so that the life of the animal be endangered as little as possible.

May be killed if they cannot be taken up.

Notice being given.

SEC. 2. *Be it further enacted*, That if any seed horse or stallion above the age of eighteen months, shall be found running at large, and cannot be taken up, he may be killed: *Provided, however*, That notice first be put up in three of the most public places in the county, at least ten days, containing a description of the said horse, his color, marks, and brands, and a notice that he will be killed unless taken away and secured, one of which notices shall be at the court house door.

[*Approved, December* 22, 1824.]

IDIOTS AND LUNATICS.

AN ACT for the restraint, support and safe keeping of persons of unsound mind.

22 Jan. 1825.

On application, enquiry to be made by jury.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That when any person shall give information in writing to any probate court, that any person within their county is of unsound mind and incapable of prudently managing his or her own affairs, and shall pray that an inquiry thereof be had, the court shall cause the person so alleged to be insane, to be brought before them, and shall inquire into the facts by jury or otherwise; and if it be found that such person is of unsound mind, and incapable of prudently managing his or her own affairs, the court shall appoint some fit person or persons, as guardian or guardians of such unsound person, who shall have the care, safe keeping and management of such person, his or her estate and effects; and the costs of such proceedings shall be paid out of the estate of such person: but if he or she be not found to be of unsound mind as aforesaid, the costs shall be paid by the applicant.

Guardian to be appointed

Costs of enquiry.

Guardians to give bond.

SEC. 2. *Be it further enacted*, That every guardian appointed, as aforesaid, shall, before entering upon the discharge of the duties assigned him, enter into bond to the

Condition.

state of Missouri, in such sum and with such security as the probate court shall approve, conditioned that he will, according to law, make and return true and perfect inventory or inventories, of all the estate and effects, real and personal, of such insane person, which may come to the hands, possession or knowledge of such guardian, or any person for him; that he will well and truly take care of such insane person, and manage and administer his estate and effects, to the best advantage and according to law; that he will well and truly account for, and pay and render according to law all moneys, property and effects, which may come to his hands or possession as guardian, and will not commit any waste or destruction of the property, real or personal, that he will render from time to time according to law, or the order of the court, true accounts of his receipts and expenditures, and other matters touching his guardianship, and will make due and proper settlements thereof, and will do and perform all other matters and things, touching his said guardianship, as are or shall be prescribed by law, or enjoined on him by the order, sentence or decree of any court having competent jurisdiction: which bond shall be deposited with the judge of the probate court of the proper county, and by him recorded, and a copy thereof duly certified by such judge shall be evidence in any court in this state, as fully in all respects as the original.

Bond, where deposited & recorded; copy, when evidence.

Guardian to publish notice of his appointment

SEC. 3. *Be it further enacted*, That it shall be the duty of every person, appointed guardian as aforesaid, within thirty days after his appointment, to cause a notice of his appointment to be published in some newspaper published in this state, and continue such publication therein, for four weeks successively, or otherwise publish such notice at such time, and in such manner, as the court shall order.

Duty of guardian to collect and preserve property and effects

SEC. 4. *Be it further enacted*, That every guardian, appointed and duly qualified, shall take charge of the person so committed to him, and shall collect, and take into possession the goods, chattels, moneys, effects, books and other evidences of debt, and all writings and other evidences touching his estate, and effects, real and personal, and shall make a just, true and perfect inventory of the whole estate and effects, real and personal, of such insane person, and therein state the income and profits thereof; which inventory shall be verified by his oath or affirmation, and filed in the office of the judge of the probate court by which he was appointed, within three months after his appointment. He shall prosecute and defend all actions commenced by or against such insane person, and pend-

Make and return inventory.

To prosecute and defend actions.

ing at the time of his appointment; he shall commence and prosecute all actions necessary for the recovery of any moneys due, or to become due, or any property belonging to such insane person; to appear and defend all actions commenced against such insane person, after his appointment; to collect all debts due, or becoming due, to such insane person, and give acquittances and discharges therefor; to adjust and settle, and pay all demands, due or becoming due, from him or her; he shall have power to do all things necessary and proper in the management of the estate; he shall commit no waste or destruction thereof, or suffer it to be done by others; he shall apply the income of such estate to the support of the insane person, and his or her family, and to the education of the children, according to the order of the court by which he was appointed; and in case such income shall not be sufficient for that purpose, and the payment of debts, shall apply to such court for authority to sell such part of the estate as shall be necessary for that purpose, and shall obey their order therein; he shall once in every year, or oftener, if thereto required by the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with such court. And whenever such insane person shall recover his right mind, or shall die, or such guardianship be otherwise determined, he shall make a full and complete settlement of his administration, and render to such person, so recovering, or to the heirs, executors or administrators of the person so dying, or to his successor, if removed, all the estate, real and personal, moneys, books, papers, writings, and evidences, which shall have come to his hands, and not otherwise lawfully disposed of, in such manner as the court appointing him shall in that behalf award and order.

To collect debts, give receipts, &c.

Shall not commit waste.

Application of income.

May be authorized to sell real estate.

To account and make settlements.

SEC. 5. *Be it further enacted*, That the court before which any person shall be found to be of unsound mind, as aforesaid, shall have power to make and enforce such orders for the restraint, support, and safe keeping of such person, and for the management of his estates, and for the support and maintenance of the family, and the education of the children of such insane person, out of his or her personal estate, and the rents and profits of his or her real estate, having regard to the amount and value of the same; and to set apart and reserve to the family the use of any property, real or personal, which shall not be necessary to be sold for the payment of debts; and may, from time to time, cause such part of the real and personal estate to be sold, as shall be necessary for the payment of debts, or the support and maintenance of such insane person, and his family, or the education of his children.

Power of court over insane persons & their estates.

Real estate may be sold, when necessary.

On petition of guardian, accompanied by accounts, &c.

Court may order sale & prescribe terms.

SEC. 6. *Be it further enacted*, That when the personal estate of any person of unsound mind as aforesaid, shall not be sufficient for the discharge of his debts, and the support and maintenance of himself and family, and the education of the children, it shall be the duty of the guardian or guardians, to present a petition to the probate court having the settlement of their accounts, setting forth the particulars, and the amount of the estate, real and personal, and of the debts by him owing, accompanied by a full, true and perfect account of his guardianship; and if it appear to the court that the personal estate, and income of the real estate, is insufficient, for the purposes aforesaid, and if, upon the whole matter, they shall think it most beneficial, they may order and direct the sale of the whole, or so much, or such part of the real estate of such insane person as the said court shall think proper, and direct how such sale shall be made, the proceeds received, and the income or produce thereof appropriated; and the court may if they think proper join one or more persons with the said guardian or guardians, for the purpose of conducting such sales, and may give such orders and directions respecting the time and manner of such sales as to the said court shall seem proper.

Notice of time & place of sale to be given.

Sale how conducted.

Report to be made.

If approved, deed to be executed.

SEC. 7. *Be it further enacted*, That it shall be the duty of the guardians, and other persons appointed to make sales of real estate by order of the court as aforesaid, to cause notice of the time and place and terms of sale, and a description of the property to be sold, to be inserted four weeks, successively, in some newpaper printed in or nearest to the county in which the premises to be sold are situate, and shall also put up like advertisements at six of the most public places in such county, six weeks before the day of sale; and the guardians and other persons so appointed, as aforesaid, shall, on the day and at the time and place appointed for the sale thereof, sell the said lands, at public vendue, to the highest bidder, and make report in writing of all their proceedings thereon to the next court, at the next term thereof after the sale, accompanied by an affidavit, on oath or affirmation, by each of the persons making such sale, stating that he did not become the purchaser of the lands and tenements, or any part thereof himself, and that they were not purchased for his use, and that he is in no wise interested in the purchase thereof; and if the court approve the proceedings, the persons making the sale shall execute a deed to the purchaser, setting forth the order of sale at large, and conveying to the purchaser all the estate, right, and interest of such insane person to the estate so sold; which deed, so made, shall vest in the purchaser as good and perfect an estate in the premises so conveyed, as such insane person was seized of, or entitled to, at the time of making said order by the court; but if the proceedings be disapproved, the court may set aside the sale, and order all the moneys paid to be refunded, and all securities given cancelled, and may renew the order of sale as often as may be necessary until the proceedings are approved.

If report not approved, proceedings.

Incapacity of idiots, &c. to contract.

SEC. 8. *Be it further enacted*, That the person who may be found to be of unsound mind as aforesaid, shall not have power to enter into any contract without the consent of his or her guardian; but all contracts made and entered into as aforesaid, without the consent of the guardian, shall be utterly null and void and of no effect: and his or her guardian may bring suit for, and recover, any money or property which his ward may have disposed of without his consent.

Not to be arrested or held to bail in civil or penal actions

SEC. 9. *Be it further enacted*, That no person found to be of unsound mind as aforesaid, shall be or stand committed or retained in prison for want of bail, or his or her body taken in execution on any civil action, or on any action for a penalty; and in case any such person shall be arrested and detained in custody, contrary to the true intent and meaning of this act, he or she shall be discharged, on application to any court of record, or to any judge thereof in vacation, by any person on his behalf, by writ of *habeas corpus*, returnable forthwith.

Habeas corpus.

Guardian to restrain or confine his ward, if necessary.

SEC. 10. *Be it further enacted*, That if any person, declared of unsound mind as aforesaid, shall be unfit to go at large, or may endanger or injure other persons or their property, it shall be the duty of his or her guardian, or other person under whose care he or she may be, or who are bound to provide for and support him or her, to confine him or her in some suitable place until the next sitting of the probate court, who shall make such order for the restraint and safe keeping of such person as they shall deem proper. And if the person under whose care any such insane person may be, or who are bound to provide for and support him or her, shall neglect or refuse to confine him or her, then any judge of any court of record, or any two justices of the peace, may cause such insane person to be apprehended, and may employ any person or persons to confine him or her in some suitable place, until the probate court shall make further order therein; and the guardian, or other person bound to confine such person, shall pay the expenses thereof, or the same shall be paid out of the county treasury, as the county court shall order.

Insane persons may be confined by order of court or judge, &c.

SEC. 11. *Be it further enacted*, That if the estate of any

To be supported at the expense of the county, if property insufficient.

Mode of drawing support from the treasury.

person of unsound mind is insufficient to pay his debts, to support him and his family, and educate his children as aforesaid, the guardian shall apply to the county court of the proper county, by petition, accompanied by a true and perfect account of his guardianship, list of the debts due from such insane person, and an inventory of his estate and effects, verified by oath or affirmation; and if the county court shall be satisfied that such estate is insufficient for the purposes aforesaid, they shall have power to order such sum to be paid to the guardian, out of the county treasury, as to them shall appear reasonable, and cause a warrant to be issued therefor accordingly: but no allowance shall be made, at any one time, for a period longer than one year; nor shall such order be made, at any time, until the guardian shall produce satisfactory evidence that he has previously duly accounted for and settled with the probate court for the moneys which shall have come to his hands, for the support of such insane person, out of the county treasury or otherwise.

Process against, to be served on guardian.

Execution.

SEC. 12. *Be it further enacted*, That in all suits commenced against any insane person, the process shall be served on his or her guardian, who shall have full power to defend such suit; and when judgment shall be rendered against any such insane person, or his guardian as such, the execution shall be against the goods and chattels, lands and tenements only of such insane person, and in no case against his body, nor against the body or property, goods and chattels, lands and tenements of such guardian, unless he shall have rendered himself liable thereto by false pleading or otherwise.

Upon alleging restoration to right mind, enquiry to be had: proceedings thereon.

SEC. 13. *Be it further enacted*, That when any person declared of unsound mind as aforesaid, or any person for him, shall petition the probate court, setting forth he has been restored to his right mind, and the facts therein stated shall be verified by the oath of one or more competent witnesses, the court shall cause the fact to be inquired into by a jury or otherwise,—and if it be found that such person has been restored to his right mind, he shall be discharged from the care and custody, and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands, belonging or appertaining to him. And in case of the death of any such person, his estate shall descend, and be disposed of, in the same manner as if he were sane; and the guardian shall immediately render his accounts and make final settlement, and render the moneys, estate, books, papers, writings and evidences in his hands, to such person as the court shall direct and order.

Guardian may be required to give new bond.

Consequence of failure to give such bond.

Guardian may be removed, for what causes.

SEC. 14. *Be it further enacted,* That the court appointing any guardian as aforesaid, when they have cause to believe, upon the information of any person or otherwise, that the penal bond of such guardian is insufficient to secure the due administration of the estate, or that the securities, or any of them, are or is failing or in dubious circumstances, may require such guardian to give a new bond or additional security or securities,—and on neglect or refusal so to do, may displace him and appoint another. And the court shall have power to remove such guardian, at any time, for any neglect of duty or mismanagement, and appoint another in his place. And whenever any guardian is removed from his trust, he shall immediately settle his accounts, and render to his successor the moneys, estate, books, papers, writings and evidences in his hands, as the court shall direct and order.

Power of the court over guardians.

SEC. 15. *Be it further enacted,* That the probate courts, respectively, shall have full and complete power to control the guardian of any insane person as aforesaid, in the management of the person and estate of such insane person, to settle his accounts, and may enforce and carry into execution their orders, sentences and decrees, in the same manner as a court of chancery may or can do; and for disobedience thereof by any guardian as aforesaid, shall have power to issue attachments as for contempt, imprison the body, or proceed by sequestration of lands and goods.

[*Approved, January 22, 1825.*]

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IMPEACHMENT.

Dec. 18, 1824.

AN ACT regulating the trial of Impeachments.*

*See state Cons. art. 3, sec. 29, 30; ante p. 48, 49

Articles to be preferred & managers elected by H. of Rep.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That when the house of representatives shall be satisfied that there is good cause for proceeding against any officer by impeachment, they shall cause articles of impeachment to be made out, in due form, against such officer, and transmit the same to the senate, and immediately elect one or more managers to prosecute such impeachment.

Officer impeached suspended from office.

Appointments pro tem. to be made in certain cases.

SEC. 2. *Be it further enacted,* That when any officer is impeached, he shall be, and is hereby suspended from exercising his office, from and after the time he shall be notified thereof as hereinafter provided, until his acquittal; and if the secretary of state, auditor of public accounts, state treasurer, or attorney general, shall be impeached, and notified thereof, an appointment shall be made by the governor, or person exercising the government for the time being, to supply such vacancy, until such impeachment shall be determined; and if the president of the senate be impeached, notice there shall be immediately given by the house of representatives, to the senate, that another president may be appointed.

Senate to appoint a day for appearance of the accused, and issue summons with copy of articles annexed

Sec. 3. *Be it further enacted*, That when articles of impeachment shall be presented to the senate, they shall immediately appoint some day for the appearance of the accused; and cause a summons to be issued, signed by the president, and countersigned by the secretary, with a copy of the articles of impeachment annexed, requiring the accused to appear, on the day appointed for that purpose, and answer the charges exhibited against him; which shall be served by the sergeant-at-arms of the senate, or by any special messenger by them appointed, a reasonable time before the day appointed for his appearance; which notice shall be served on the accused personally, if he can be found, and if he cannot be found, then by leaving a copy of such summons and articles of impeachment at his dwelling house, or usual place of abode. And if the governor be impeached, the presiding judge of the supreme court shall be notified by the president of the senate, of such impeachment, and of the day when his attendance will be required; and such judge shall attend and preside at the trial; and if he shall be sick and unable to attend, the judge of the said court next eldest in commission shall be notified, and preside at the trial aforesaid.

Service of summons.

If governor impeached, judge of supreme court to be notified

Resposne.&c to be filed, & day set for trial.

Sec. 4. *Be it further enacted*, That upon the appearance of the accused, he shall have a reasonable time to answer the impeachment, and when the answer shall be filed, the managers may reply thereto, and when issue shall be joined on any such impeachment, the court shall appoint a time for the trial thereof; and the president of the senate on the application of the respondent or any of his counsel, or either of the managers, shall issue subpœnas for witnesses, and commissions to take depositions, in all cases where the witness is unable to attend from sickness or other bodily infirmity, or where the witness is without the limits of this state; and such depositions shall be taken in the same manner, and the same notice to be given, as where depositions are taken in the circuit court: *Provided, nevertheless*, That if the accused shall not appear, after being notified as aforesaid, the senate may proceed *ex parte*.

Process for witnesses, & commissions to take depositions.

President & members of the senate to be sworn.

Sec. 5. *Be it further enacted*, That at the time and place appointed for trial, and before proceeding thereon, the president of the senate or presiding judge shall administer to the members of the senate then present, and the secretary shall, at the same time, administer to the president or presiding judge, an oath or affirmation, as the case may require, truly and impartially to try and determine the charges and do justice according to law and evidence; and no member shall sit or give his vote, until he shall have taken an oath or affirmation in manner aforesaid; and the members being so sworn, the senate shall proceed to hear, try and determine such impeachment, and may from time to time, if necessary, adjourn the trial to any other time; and the senate shall determine all questions of law arising during the progress of the trial, upon the admissibility of evidence, the competency of witnesses or otherwise, and may punish any person for any contempt committed towards the senate, or for the obstructing the administration of justice on such trial, in as full and ample a manner as any court of record might or could do, for like contempt toward such court; and in all such trials the accused shall have a right to be heard by himself and his counsel; and all votes on any question, whatever, shall be given *viva voce* and entered on the journals; and no judgment or sentence of conviction shall be given against any person upon any impeachment, without the concurrence of two thirds of all the senators present: and the party convicted or acquitted shall, notwithstanding such conviction or acquittal, be subject to indictment, trial, judgment and punishment for any indictable offence, according to the law of the land.

Trial, how conducted.

Votes to be given viva voce.

Concurrence of two thirds required to convict.

Conviction no bar to indictment for same offence

SEC. 6. *Be it further enacted*, That the secretary of the senate shall make out a complete transcript of the proceedings had on any impeachment, and of the judgment of the senate, whether of conviction or acquittal; which shall be signed by the officer presiding at the trial, and attested by the said secretary, and deposited in the office of the secretary of state.

Transcript of proceedings to be made out and deposited in the office of sec of state.

SEC. 7. *Be it further enacted*, That all writs, process and subpœnas, issued by the senate, shall run in the name of the state of Missouri, and be tested in the name of, and subscribed by the presiding officer, and countersigned by the secretary; and shall be served by the sergeant-at-arms, or any special messenger appointed by the senate, in any part of this state.

Form and attestation of writs, &c.

[*Approved, December* 18, 1824.]

INCLOSURES.

Dec. 30, 1824.

AN ACT regulating Inclosures, and for preventing trespasses therein.

What shall be deemed sufficient in law.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That all fields and grounds kept for inclosures shall be well inclosed with a fence sufficiently close, composed of sufficient posts and rails, posts and palings, palisadoes, or rails alone laid up in the manner which is commonly called a worm fence; which posts shall be deep set and strongly fastened in the earth. And all fences composed of posts and rails, posts and palings, or palisadoes, or of rails in manner which is commonly called a worm fence, shall be at least five feet high; the uppermost rail of each and every pannel of the kind last mentioned shall be supported by strong stakes, strongly set and fastened in the earth, so as compose what is commonly called staking and ridering; otherwise the uppermost rail of every pannel of such worm fence shall be braced with two strong rails, poles or stakes, locking each corner or angle thereof. And that, in all cases, the sufficiency of the worm shall be adjudged of by the persons who may be summoned to view said fence.

Owners of animals trespassing, liable for damages.

Sec. 2. *Be it further enacted*, That if any horse, gelding, mare, colt, mule or ass, sheep, lamb, goat, kid, or cattle, shall break into any person's inclosure, the fence being of the height and sufficiency aforesaid; or if any hog, shoat or pig shall break into the same,—the owners of such creature or creatures shall, for the first trespass, make reparation to the party injured for the true value of the damages he shall sustain; and for every trespass thereafter, double damages, to be recovered, with costs, before a justice of the peace, or in any court of record, having cognizance of the sum demanded by the party injured: *Provided*, That for a third offence from any of the beasts aforesaid breaking into such inclosure, the party injured may kill and destroy the beasts so trespassing, without being answerable for the same.

2d offence.

3d offence, animal may be killed.

On complaint made to J P. view to be had.

Sec. 3. *Be it further enacted*, That upon complaint of the party injured to any justice of the peace of the township, such justice shall issue his order without delay to three householders of the neighborhood, no ways related to the party injured, nor interested concerning the trespass, reciting the complaint, and requiring them to view the fence where the trespass is complained of, and to take memorandums of the same; and their testimony in such case shall be good evidence on the trial, touching the lawfulness of the fence.

Sec. 4. *Be it further enacted*, That if any person, damnified, for want of such sufficient fence, shall hurt, wound, lame, kill or destroy, or cause the same to be done, by shooting, hunting with dogs, or otherwise, any of the creatures in the second section of this act mentioned, such person shall satisfy the owner of such creatures, so hurt, wounded, lamed, killed or destroyed, double damages, with costs, recoverable as aforesaid.

Persons killing or injuring animals, if fence insufficient, to pay double damages.

[*Approved, December* 30, 1824.]

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INDIANS.

AN ACT to restrain intercourse with Indians within this state.

Dec. 9, 1824.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That any citizen, or other person, who shall attempt to reside in any town or hunting camp, of any Indian tribe, within this state, as a trader, without a license from the proper authorized agent of the United States, shall forfeit all the merchandize offered for sale to the Indians, or found in his possession; and shall, moreover, be fined, not exceeding one hundred dollars, and imprisoned, not exceeding thirty days.

Trade and intercourse without license, prohibited.

Penalty.

Sec. 2. *Be it further enacted*, That if any such citizen, or other person, shall induce any Indian to come into the white settlements, for the purpose of trade, or shall purchase or receive of any Indian, in the way of trade or barter, a horse, a gun, or other article commonly used in hunting, any instrument of husbandry, or cooking utensil, of the kind usually obtained by the Indians in their intercourse with the white people, or any article of clothing, excepting skins or furs, he shall be fined in a sum not exceeding fifty dollars, and be imprisoned, not exceeding thirty days: *Provided*, That no person shall incur the above penalties by trading with any of those tribes of Indians settled on the waters of the Merrimack, in Franklin county, or on the waters of the Saint Francois river.

Certain trade with Indians within white settlements prohibited.

Penalty.

Sec. 3. *Be it further enacted*, That if any person within this state, except by permission from the proper authorized agent of the United States, shall sell, exchange, furnish, or give to any Indian, any spirituous, vinous, or other strong liquor, and shall be convicted thereof, he or she shall forfeit and pay a sum not less than thirty nor more than one hundred and fifty dollars, or shall be imprisoned, not exceeding thirty days nor less than ten, at the discretion of the court.

Selling, exchanging or giving liquor to Indians.

Penalty.

Sec. 4. *Be it further enacted*, That all the offences created by this act, shall be tried and punished in the circuit courts of the counties in which the same may be perpetrated, res-

Prosecutions where to be had.

Penalties appropriated.

pectively, upon the indictment or presentment of a grand jury; and all fines, penalties, and forfeitures, accruing under this act, shall be for the use of the county in which the conviction is had; and the several judges shall give this act in charge to the grand jury.

This act shall take effect and be in force from and after the passage thereof.

[*Approved, December 9th*, 1824.]

INJUNCTIONS.

8 Feb. 1825.

AN ACT regulating the granting of Injunctions.

By what authority granted.

Proviso.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That the supreme court and circuit courts, in term time, and any judge thereof in vacation, shall have power to grant injunctions: *Provided, however*, That no writ of injunction shall be granted to stay proceedings under a judgment obtained for a sum not exceeding sixty dollars, before a justice of the peace.

To what courts returnable.

Sec. 2. *Be it further enacted*, That when an injunction shall be granted by the supreme court, or a judge thereof, it shall be made returnable into the circuit court of the proper county.

In what courts proceedings shall be had.

Sec. 3. *Be it further enacted*, That where an injunction shall be granted to stay a suit or judgment at law, the proceedings shall be had in the county where the judgment was obtained or the suit is pending; and the writ of subpœna may be sent, in the first instance, into any county within this state where the defendant resides.

Notice of application for, to be given.

Contents, and service.

To what extent injunction allowed.

Sec. 4. *Be it further enacted*, That no injunction shall be granted to stay any proceeding at law, unless the party praying therefor shall first give reasonable notice in writing to the adverse party, if within the state, or to his known agent or attorney, if he has any within the state; but if the party does not reside within the state, and has no known agent or attorney therein, then notice shall be be put up, at least ten days before the application for the injunction, in the office of the clerk of the circuit court of the county where the proceedings at law were had; which notice shall state the time and place of applying for such injunction; the service of which notice shall be proven by one witness at least, or the acknowledgment of the adverse party, or his attorney or agent, endorsed thereon: nor shall any injunction be granted to stay any judgment at law for a greater sum than the complainant shall show himself equitably not bound to pay, and so much as shall be sufficient to cover costs. And every in-

To operate as a release of errors.

Bond to be given.

Condition.

May be taken by clerk.

Damages to be awarded upon dissolution.

Notice of application not required in certain cases.

junction, when granted, shall operate as a release to all errors in the proceedings at law that are prayed to be enjoined. Nor shall any injunction be issued, unless the complainant shall have previously executed a bond, with sufficient surety, to the defendant, approved by the court or judge granting such injunction, and filed with the clerk, in double the sum directed to be enjoined, conditioned for the payment of all money and costs due or to be due to the plaintiff in the action at law, and also all such costs and damages as shall be awarded against the complainant in case the injunction shall be dissolved; or such bond may be entered into before the clerk of the circuit court of the county where the writ is required to be issued, the court or judge granting the injunction having first approved of the security. If the injunction be dissolved, in the whole or in part, the complainant shall pay, exclusive of legal interest and costs, such damages as the court shall award, not exceeding ten per centum on such part as may be released from the injunction, and the clerk shall issue execution for the same when he issues execution upon such judgment: *Provided, however*, That where an injunction to stay proceedings at law is prayed for in the same court where proceedings were had, no notice of the application shall be necessary, except such as may be prescribed by the rules and practice of the court.

Application overruled, certificate to be granted; effect thereof

SEC. 5. *Be it further enacted*, That whenever any court or judge shall overrule any application for an injunction, it shall be the duty of the said court or judge to grant to the defendant, in the bill named, a certificate thereof; and it shall not be lawful for any judge thereafter, in vacation, to grant an injunction in such cause.

Disobedience or breach, after service, punishable as a contempt.

Attachment may be issued in vacation.

Proceedings.

SEC. 6. *Be it further enacted*, That if any person, against whom a writ of injunction shall be issued, shall, after the service thereof, be guilty of a disobedience to and a breach of the said injunction, it shall be lawful for the judge granting the same, or if the same were granted in open court, then for any judge of that court, in vacation, to issue an attachment against the said person for a contempt; and upon his being brought before the said judge, unless he shall disprove or purge the said contempt, the said judge may, in his discretion, commit him to gaol until the sitting of the court in which the said injunction is pending, or take bail for his appearance in the said court at the next term thereof, to answer for the said contempt, and to abide by the order of the court thereon.

After answer filed, motion for dissolution always in order.

SEC. 7. *Be it further enacted*, That upon the filing of an answer, it shall be in order, at any time in term, to move for the dissolution of the injunction; and upon such mo-

Testimony may be introduced.

Continuance of motion may be granted, on affidavit.

Testimony to be by deposition.

May be read on final hearing.

tion, it shall be lawful for the parties to introduce testimony to support the bill and answer: and the court shall decide such motion upon the weight of testimony, without being bound to take the answer as absolutely true. And if after such dissolution is moved for, the plaintiff in the bill will satisfy the court, by his own affidavit, or by the affidavit of any disinterested person, that the answer, or any material part thereof (to be specified in such affidavit) is untrue,—and that he has witnesses, whose testimony he believes he can procure by the next term of the court, who will disprove the said answer, or such material part thereof as shall be specified as aforesaid, and that he has had no opportunity to procure such testimony since the coming in of the answer, it shall be lawful for the court to grant a continuance of the said motion until the next term. The testimony to be heard on such motions, aside from the bill and answer, shall be by depositions in writing, taken as in other cases in chancery proceedings, except the affidavits which may have been filed with the bill or answer, which may be read on such motion as heretofore; and the depositions taken to support or dissolve an injunction, may be read on the final hearing of the cause in which they have been taken.

[*Approved, February* 8, 1825.]

INQUEST.

18 Dec. 1824

AN ACT to provide for holding Inquests.

In case of death by violence or casualty, coroner to issue his warrant to constable for summoning jury.

Duty of constable.

Penalties on

SEC 1. *Be it enacted by the General Assembly of the state of Missouri*, That every coroner, as soon as he shall be notified of the dead body of any person, supposed to have come to his or her death by violence or casualty, found or lying within his county, shall make out his warrant, directed to the constable of the township where the dead body is found or lying, requiring him forthwith to summon a jury of good and lawful men, householders of the same township, not less than eighteen in all, (so that twelve at least may be present) to appear before such coroner, at the time and place in his warrant expressed, and to enquire upon a view of the body of the person then lying dead, how, and in what manner, and by whom, he or she came by his or her death; and every such constable, to whom such warrant shall be directed and delivered, shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant, with his proceedings thereon, unto the coroner who granted the same; and every constable failing of executing such war-constable and jurors.

rant, or of returning the same, as aforesaid, shall forfeit and pay the sum of eight dollars; and every person summoned as a juror, as aforesaid, that shall fail to appear or make a reasonable excuse to the coroner for his non-attendance, within five days after the time appointed in the warrant, shall forfeit and pay the sum of five dollars, which fine shall be recoverable in an action of debt, at the instance of the coroner, and in the name of the state, before any justice of the peace, and be applied to the use of the county.

How recovered and appropriated.

Oath of jurors.

Foreman.

Sec. 2. *Be it further enacted*, That the coroner shall administer an oath or affirmation, to at least twelve of the jurors who shall appear, to the foreman first in the following form—"You solemnly swear (or affirm) that you will diligently enquire, and true presentment make, how, in what manner, and by whom, A. B. who here lies dead, came to his death; and you shall deliver to me, coroner of this county, a true inquest thereof, according to such evidence as shall be laid before you, and according to your knowledge:" the other jurors shall swear, or affirm, in the following form—"Such oath or affirmation as your foreman hath taken, you and each of you shall well and truly observe and keep."

Other jurors.

Coroner to charge the jury.

Sec. 3. *Be it further enacted*, That as soon as the jury shall be sworn, the coroner shall give them a charge, upon their oaths to declare of the death of the person, whether he or she died of felony or mischance, or accident; and if of felony, who were principals, and who were accessaries, with what instrument he or she was struck or wounded, and so of all prevailing circumstances, which may come by presumption; and if by mischance or accident, whether by the act of man, and whether by hurt, fall, stroke, drowning, or otherwise; also, to enquire of the persons who (if any) were present, the finder of the body, his or her relations and neighbors, whether he or she was killed in the same place where the body was found, and if elsewhere, by whom and how the body was brought there, and of all other circumstances relating to said death; and if he or she died of his or her own act, then the manner, means, or instrument, and of all circumstances concerning it.

Proclamation for witnesses.

Sec. 4. *Be it further enacted*, That when the jury are sworn, they shall remain together, and proclamation shall be made for any person who can give evidence to draw near and they shall be heard.

Process for witnesses.

Sec. 5. *Be it further enacted*, That every coroner shall be empowered to issue his warrant for witnesses, commanding them to come before him, to be examined, and to declare their knowledge concerning the matter in question;

Oath.

he shall administer to them an oath or affirmation, in form following—"You do swear (or affirm) that the evidence you shall give to this inquest, concerning the death of A. B. here lying dead, shall be the truth, the whole truth, and nothing but the truth."

Testimony to be reduced to writing & witnesses recognized in certain cases.

SEC. 6. *Be it further enacted*, That the evidence of such witnesses shall be taken down in writing, and subscribed by them; and if it relate to the trial of any person concerned in the death, then the coroner shall bind such witnesses by recognizance, in a reasonable sum, for their appearance before the circuit court of the county where the felony appears to have been committed, at the next term thereof to be holden within the said county, there to give evidence accordingly; and commit to the common jail of the county, any witness or witnesses refusing to enter into such bond;

Return of inquest; verdict.

and shall return to the same court the inquisition, written evidence, and recognizance by him taken; and the jury having viewed the body, heard the evidence, and made all the enquiry in their power, shall draw up and deliver to the coroner, their verdict upon the death under consideration, in writing, under their hands, and the same shall be signed by the coroner.

Proceeding, if death found by felony, &c.

SEC. 7. *Be it further enacted*, That upon an inquisition found before any coroner, of the death of any person by the felony or misfortune of another, he shall speedily inform one or more of the justices of the peace of the proper county, or some judge or justice of some court of record, whose duty it shall be forthwith to issue their process for the apprehension, examining, and securing for trial, of such person or persons killing or being any way instrumental to the death.

Judge or justice may take inquest in certain cases.

SEC. 8. *Be it further enacted*, That if the coroner, by sickness or other causes, is not able to take the inquest provided for by this act, or if the coroner resides at a greater distance than forty miles from the place where the dead body is found lying; any justice of the peace, or some judge or justice of some court of record, of the proper county, is hereby authorized and required to take the inquest, and perform all and singular the duties hereby enjoined on the coroner:

Constable unable to attend, some other person to do his duty

and if the constable of the proper township is unable to execute the duties required by this act, the coroner or justice of the peace may direct his warrant to any other householder of the township, who shall perform the duties of a constable, under the same penalties and be entitled to the same fees as a constable.

[*Approved, December* 18, 1824.]

INSOLVENT DEBTORS.

AN ACT for the relief of Insolvent Debtors.

18 Dec. 1824.

Application for relief, how made.

To be bro't before court, judge or justice.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That any debtor imprisoned, or liable to be imprisoned for debt, may make application in writing, to any court of record, judge or justice thereof in vacation, of the county in which he is imprisoned or may reside, offering to deliver to the use of his creditors all his property, real, personal and mixed, to which he is in any way entitled (necessary wearing apparel for himself and family excepted,) and praying to be permitted to take the benefit of this act; and thereupon it shall be the duty of such court, judge or justice, forthwith to issue his order in writing directed to the sheriff or other officer, in whose custody such debtor may be, commanding him to bring such imprisoned debtor before such court, judge or justice, issuing the order, on a day therein named, which shall not exceed five days from the date of such order, and if the applicant shall not be imprisoned, the court, judge or justice shall set a day for hearing such application, not exceeding ten days after the same is made.

To deliver a schedule of property and effects.

And list of creditors.

Oath to be administered subscribed and attested.

SEC. 2. *Be it further enacted,* That when any debtor shall come or be brought before any court, judge or justice, for the purpose of taking the benefit of this act, he shall deliver to the court, judge or justice, before whom he is brought, a schedule of all his property, real, personal and mixed, (necessary wearing apparel for himself and family excepted) to which he is in any way entitled, with the necessary information for obtaining the same, a list of all debts due to him, whether by bond, bill, note, book account or otherwise, with the description of the book and evidences of such debt, and all title papers, marked and numbered, and all information necessary to the recovery thereof, and a list of all his creditors with the amount respectively due them; and the said court, judge or justice, shall thereupon administer to such applicant the following oath or affirmation annexed to such schedule, to wit: "I, A.B. do solemnly swear or affirm (as the case may be) that the schedule by me delivered and subscribed, doth contain, to the best of my knowledge, remembrance and belief, a full, just, true and perfect account and discovery, of all the property, real, personal and mixed, to which I am in any way entitled, (necessary wearing apparel for myself and family excepted) and all the information in my power for obtaining the same, and all debts due, or to become due to me by bond, bill, note, book account or otherwise; and of all books and evidences of debt and title papers, whereby any money or property now is, or may hereafter become due or payable, or any benefit or advantage accrue to me, or to my use, or any person or persons in trust for me; and also a list of all my creditors with the sums respectively due to them, as far as I can ascertain them, and that I, or any person in trust for me, have no property, real, personal or mixed, stock, books, bonds, bills, notes, title papers or evidences of debt, except those contained within this schedule; and that I have not given any undue preference to any of my creditors, or used any device or artifice to cover or conceal any of my property, from my creditors in any manner whatsoever;" which oath or affirmation shall be subscribed by such applicant and duly attested.

Copy of schedule to be delivered to sh'ff with property, &c.

Sec. 3. *Be it further enacted*, That it shall be the duty of the petitioning debtor, to deliver or cause to be delivered to the sheriff of the county, a copy of the schedule aforesaid, and all his property in possession, therein mentioned, and also, to give to him every information in his possession necessary to obtain his property, together with his books, title papers, and evidences of debts and contracts, of every kind or nature whatsoever; and the said sheriff shall certify the same to the said court, judge or justice, to whom the application is made; and it shall be the duty of said court, judge or justice, to cause to be delivered or reserved to such applicant, such bedding for himself and family, and such household furniture and implements of his trade or occupation as he shall judge convenient and reasonable, and the arms and accoutrements required by law to be kept, and such other goods, chattels, and property, as shall for the time being be by law exempt from execution.

Property to be reserved.

Certificate of discharge & exemption to be granted.

Sec. 4. *Be it further enacted*, That it shall be the duty of the court, judge or justice, as soon as such debtor shall have complied with the foregoing provisions of this act, to make an order under the seal of the court, judge or justice, (as the case may be,) discharging and exempting such debtor from arrest and imprisonment, until the end of the term of the circuit court next to be holden for such county, after the expiration of six weeks from the date of such order, and such debtor shall be discharged and exempted accordingly.

Perishable property to be sold by order.

Sec. 5. *Be it further enacted*, That the said court, judge or justice, shall make an order directed to the sheriff of the proper county, requiring him to sell and dispose of the perishable property of said debtor (if any,) to be specified on the order and prescribing the terms of sale; and the sheriff shall sell and dispose of the same accordingly, giving twenty days notice of the time, place and

Notice of time & place of sale.

terms of the sale, in some newspaper (if any there be) printed in the county, or by advertisements set up at six of the most public places in the county, if there be no paper printed therein.

Schedules, &c to be certified to circuit court.

SEC. 6. *Be it further enacted*, That it shall be the duty of the courts, and all judges and justices, to cause all schedules, petitions, oaths, bonds and other proceedings, had before them by virtue of this act, to be duly certified and filed in the office of the clerk of the circuit court of the proper county, on or before the first day of the term of the circuit court of the proper county, which shall happen next after such proceedings shall have been had.

Notice to be published, of application for final discharge.

SEC. 7. *Be it further enacted*, That it shall be the duty of every such petitioning debtor, who shall have surrendered his property and taken the oath or affirmation in the manner prescribed by this act, before he shall be entitled to a final hearing and discharge, as hereinafter prescribed, to cause a notice of the proceedings had, and of his intention to apply for a final hearing and discharge, on a day therein named, to be published in some newspaper printed in or most convenient to the county in which he shall reside, for four weeks successively.

Failing to advertise or make application, not thereafter to have relief until bond given, &c.

SEC. 8. *Be it further enacted*, That if any insolvent debtor, having been discharged from imprisonment or exempted from arrest, shall fail to give due notice of his intention to apply for a final discharge, or shall not make application therefor, to the circuit court, at the proper term thereof, according to the provisions of this law; such debtor shall not at any time thereafter be discharged from arrest, or exempted from imprisonment for any debt contracted or contract entered into prior to the date of such first order of discharge and exemption, until the final hearing of his application, unless such debtor shall enter in bond to the governor of this state, with one or more sufficient securities, in such sum as the court, judge, or justice, to whom said debtors shall have prayed to be permitted to take the benefit of this act, may direct, to be approved of by such court, judge, or justice, conditioned that the said debtor will appear at the next term of the circuit court, for the proper county, (if that shall not be within six weeks thereafter) and there answer all allegations which his creditors may make against him; and when such application shall be made within six weeks next preceding any term of the said circuit court, the bond shall be conditioned for the appearance of such debtor at the next term thereafter.

Court or judge may appoint trus-

SEC. 9. *Be it further enacted*, That the circuit court, or any judge thereof in vacation, may appoint a trustee or trustees for the benefit of the creditors of any debtor petitiontee; who shall take oath and give bond.

Property and effects to be transferred to trustee.

ing as aforesaid; and every such trustee shall, before entering upon the duties of his office, take an oath or affirmation, faithfully to discharge the duties thereof; and give bond in such amount and with such security as the court or judge may approve, conditioned for the faithful discharge of his duties; and immediately on filing such bond with the clerk of the circuit court, all the property, real, personal and mixed, and all claims due, or to become due to such debtor, shall be vested in such trustee or trustees, for the benefit of creditors; and it shall be the duty of the sheriff or other person, in whose hands or possession any such property, or money may be, to deliver the same to such trustee or trustees; and also all books, writings, contracts, title papers, and evidences of debts, of what nature and kind soever; and the debtor shall execute a deed to such trustee or trustees for all his property, real, personal and mixed, for the use of his creditors.

Power of trustee to sue for and recover property, &c.

SEC. 10. *Be it further enacted*, That the trustee or trustees so appointed may sue for and recover, in his or their own name, any property or debt assigned to or vested in him or them by virtue of this act, and may prosecute to judgment any suit commenced by such debtor; and may commence and prosecute, and may defend, all actions arising on contracts which the said debtor might have commenced, prosecuted or defended. And if any sheriff, having in his hands or possession any property, books, writings, contracts, title papers, or evidences of debts belonging to such debtor, shall refuse to deliver the same to such trustee or trustees, as required by the preceding section, the circuit court of the proper county may compel him to deliver the same by attachment.

Court may order sales.

Application of proceeds.

SEC. 11. *Be it further enacted*, That the said circuit court may, from time to time, order the sale of any of the property and effects of such debtor, in such manner and upon such terms as they shall deem expedient; and the money and proceeds arising from the estate of any such debtor, shall be applied, first, to the discharge of the expenses accruing in the settlement of the said estate, and the fees of all officers concerned therein; and the residue of the money arising from the sale of the said debtor's estate, shall be divided among the respective creditors according to the amount of their respective demands, allowed by said trustee, as by the provisions of this act, after satisfying all judgments, incumbrances and liens, according to priority, to be divided among the creditors proportionably; but no judgment which shall be entered up, or other contract entered into, after the application of the debtor, as aforesaid, shall be a lien upon real property, nor shall any process have any effect upon the real or personal estate of such debtor, except executions actually and *bona fide* levied before such application.

Time and place of adjusting demands to be fixed by trustees; notice to be given.

Sec. 12. *Be it further enacted*, That it shall be the duty of the trustee or trustees, to appoint and fix a day, which shall be at least six and not more than twelve months after the application of the debtor, upon which he or they will proceed, publicly and openly, to adjust and liquidate the demands against the estate of such debtor: notice thereof shall be given to the debtor and creditors, by advertisement published in some newspaper printed in the county, if any, and if not, then in some other newspaper printed nearest to said county, for at least two months; and the trustee or trustees may examine the debtor and creditors, and any other person, on oath, touching any claim; and their decision shall be final, unless a creditor, or some person interested, shall, before decision is made on any particular claim, request the same to be referred to a jury; and the trustee or trustees shall certify all such cases to the circuit court of the county; and the said court may order the same to be tried, on an issue framed for the purpose; and the trustee or trustees shall from time to time make fair and just dividends, according to the provisions of this act; but on contested claims, referred to a jury, they shall reserve a proportionate part of the debtor's estate, to abide the event; and the verdict of the jury, if not set aside, on such demand, shall be final.

Demands, how adjusted

Dividends.

Creditors failing to exhibit demands.

Sec. 13. *Be it further enacted*, That all creditors who, after being notified as aforesaid, shall not attend, at the time and place of adjusting and ascertaining demands against such estate, and on oath or affirmation lay before such trustee the nature and amount of their demands, shall forever be precluded from the benefit of said estate.

Misconduct or insolvency of trustee.

Sec. 14. *Be it further enacted*, That if any complaint shall be made, by any person interested in the distribution of such estate, of the conduct of any trustee, or if any trustee shall become insolvent, the circuit court may cause such trustee to come before them, and enquire into the cause of complaint, in a summary way, and make such rules and orders as shall be adjudged necessary; may punish such trustee for contempt, and may remove him from office and appoint another.

Compensation of trustee.

Surplus property, how disposed of.

Sec. 15. *Be it further enacted*, That the circuit court may allow to the trustees such compensation as they may deem reasonable, not exceeding ten per centum, on the whole amount of the estate; and all money and property which may be left out of any debtor's estate, after payment of all debts and expenses, shall be paid and delivered to such debtor, his heirs, executors or administrators.

Sheriff to be trustee until others are appointed.

Sec. 16. *Be it further enacted,* That until a trustee or trustees shall be appointed as aforesaid, to manage and settle the estate of any such debtor, the sheriff of the proper county shall have all the powers, and perform all the duties, by this act vested in and required of the trustees, and shall be subject to the like proceedings as trustees are; and the trustees, or either of them, and the sheriff, are hereby authorized to administer all oaths and affirmations required to be taken or made before them, as trustees.

Power to administer oaths.

Creditors may exhibit allegations of fraud, when;

Sec. 17. *Be it further enacted,* That if any creditor at or before the time appointed for the final hearing of any such debtor's application, for a discharge under this act, or within two years thereafter, shall allege on oath and in writing to the court to which such application is made, if before final discharge, and (if after,) then to any court within whose jurisdiction such debtor may be found, that such debtor hath, directly or indirectly, sold, conveyed, lessened, concealed or otherwise disposed of, or purchased in trust for himself, or any of his family, or relations, or any person or persons, any part of his property, of any kind, or any part of his debts, rights or claims, with intent thereby to deceive or defraud his creditors, or any of them, or to secure the same, or to receive or expect any profit or advantages thereby; or that he has passed bonds or other evidences of debt, either without consideration or on improper consideration, or hath assigned, conveyed or delivered any of his property, or any debts, rights or credits to any creditor or security, or to any other person, with intent of taking the benefit of this act, or of giving an undue or improper preference to any creditor or creditors, or to any security; the clerk of the court before whom such allegations are filed shall issue a summons as in other cases, requiring the said debtor to appear and answer the said allegations; and upon return of such summons duly served, the court, if the debtor do not appear, shall direct an issue or issues to be made up, and tried by a jury, in a summary way, without the form of an action, to determine the truth thereof; and if such debtor appear, the court may, at the election of the creditor filing the allegations, require the debtor to answer interrogatories touching the matter alleged against him (of which he shall have a copy,) on oath or affirmation, or direct an issue or issues to be made up and tried in a summary way, to determine the truth of the same; and if, upon answer to the said interrogatories, or the verdict of a jury, such debtor shall be found guilty of any fraud or deceit, or of having given

Proceedings thereon.

any undue preference as aforesaid, he shall forever be deprived of the benefit of this act; and any creditor may in like manner, file allegations in writing against any other person, alleging, that such debtor hath, directly or indirectly, conveyed, or disposed of, or intrusted to such person any property of any kind, or any part of his debts or effects, rights or claims, with intent to deceive or defraud his creditors, or to secure the same, or any profit or advantage to such debtor, or that he has received bonds or other evidences of debt, either without consideration or on improper consideration, or that such debtor hath conveyed or delivered to such person, by his collusion, any property, goods, debts, rights or claims, or the evidences thereof, with an intent to conceal or secure the same from his creditors, or to give an undue preference to such person or any other person: and the proceedings on such allegations shall be had in the same manner as against the debtor, and determined upon interrogatories or verdicts in the same manner as against the debtor, and if such person, upon answer to interrogatories or by a verdict, shall be found guilty of any fraud or deceit, or of collusion therein, with any debtor, or concealing or covering any of his property or effects, or of having knowingly obtained an undue preference as aforesaid, or of concealing or contriving any acknowledgment of such debtor by parol or in writing, or any kind of security, give false color to any claim, such person shall pay to the creditors filing the allegations the whole amount due to them by such debtor, with costs of suit, and shall be liable in like manner to pay all other creditors, and if himself a creditor, shall lose his debt, and be totally excluded from all distribution.

Creditors may file allegations against persons colluding with debtor.

Proceedings thereon.

Final discharge how obtained, and effect.

Sec. 18. *Be it further enacted*, That if no allegations are filed at the time appointed for final hearing or being filed, he shall have been acquitted, and the debtor having given notice to his creditors as provided by the seventh section of this act, the court shall grant him a final discharge and exemption from arrest and imprisonment, by virtue of, or for any debt, contract, covenant, promise or agreement due from, or contracted or entered into by him, individually, or jointly with any other person, before his application, which certificate shall be attested under the seal of the court; and if any such discharged debtor shall thereafter be arrested or imprisoned, on any process sued out by virtue of any judgment or decree obtained, or for any debt, damages or costs, owing or growing due, or upon any contract entered into before such application, he shall be discharged on application to any judge or justice of the peace, upon view of such certificate; and the court before whom any such original process shall be returnable, shall accept common appearance to the action without bail; *Provided*, That the estate, property and effects of such debtor at the time of his discharge, and all which he shall thereafter acquire, shall be liable to execution for the payment of debts contracted before or after such discharge.

Taking false oath under this act, perjury.

Sec. 19. *Be it further enacted*, That if any debtor, or any other person testifying for or against him, shall, at any time thereafter, be convicted of falsely and corruptly swearing or affirming to any matter or thing in virtue of this act, he shall suffer as in case of wilful and corrupt perjury, and upon such conviction of such debtor, he shall be for ever deprived of the benefit of this act.

Repeal.

Sec. 20. *Be it further enacted*, That "an act concerning insolvent debtors," passed by the governor and judges of the territory of Louisiana, on the sixteenth of October, eighteen hundred and seven, and all acts supplementary thereto, and all other acts and parts of acts coming within the purview of this act, be and the same are hereby repealed: *Provided*, That all proceedings commenced, by virtue of the acts hereby repealed, before the first day of March next, shall be proceeded on to final end and determination, and with the same effect as if this act had not passed.

This act shall take effect and be in force from and after the passage thereof.

[*Approved, December* 18, 1824.]

INSPECTIONS.

AN ACT establishing and regulating Inspections of Tobacco within this state.

Court to authorize the erection of tobacco warehouses.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That it shall be the duty of the several tribunals transacting county business within this state, from time to time, to authorize the erection of warehouses for the reception and inspection of tobacco, at such places within their respective counties as they may deem necessary and proper. And they shall, moreover, require the person or persons who shall apply for permission to erect the same to give bond, with sufficient security, in a reasonable penalty, payable to the justices of the said tribunal or their successors in office, for the benefit of the county, with condition to erect such strong and substantial house or houses, as will contain sufficient room for at least one hundred hogsheads of tobacco, and as many more as the said

Bond and security to be given.

tribunal may think necessary, and also to keep the same in repair as long as it shall continue a public warehouse.

Tobacco to be inspected by an inspector appointed by the court.

Sec. 2. *Be it further enacted*, That all tobacco which shall be brought to any of the warehouses established as hereinbefore directed, shall be received, inspected and examined by one person to be thereunto appointed, who shall be called inspector, and who shall be appointed in manner following, to wit: The tribunal transacting county business of the several counties wherein any warehouse or warehouses shall be established according to the provisions of this act, shall, and they are hereby authorized and required, once in every year, at the first term of their courts, or at the next succeeding term, to appoint a person of fair fame and reputation, and reputed to be skilful in tobacco, as inspector, for each and every warehouse within their respective counties; and in case of death, resignation or removal of any person so appointed, the said tribunal shall, at the term next succeeding, upon notice of such death, resignation or removal, appoint a person qualified as aforesaid to act as inspector for that inspection where the vacancy shall have occurred, until the next regular appointment of inspectors; and every inspector shall continue in office until a successor is appointed.

Vacancy in office of inspector, how supplied.

Inspector to give bond & security.

Sec. 3. *Be it further enacted*, That every person who shall be appointed inspector by virtue of this act, shall, before he enters upon the duties of his office, enter into bond, with sufficient security, in the penalty of not less than one thousand dollars, at the discretion of the tribunal transacting county business, payable to the justices of the said tribunal and their successors in office, for the benefit of the county, with condition for the true and faithful performance of his duty while he continues inspector, according to the directions of this act,—which bond shall be recorded in the office of the tribunal transacting county business; and the county treasurer shall move for judgment upon the same, against every inspector failing to discharge his duties as such, within two months after notice of such failure, under the penalty of five hundred dollars. And every inspector shall also take the following oath or affirmation, in open court, at the time he executes his bond, to wit: "You do solemnly swear, or affirm (as the case may be) that you will diligently and carefully view and examine all tobacco brought to the warehouse whereof you are appointed inspector; and that you will not receive or pass any tobacco which is not, in your judgment, sound, well conditioned, merchantable and free from trash; and that in classing the same, you will, according to your best skill and judgment, make a true and correct discrimi-

Condition.

Proceedings on bond.

Inspector to take oath.

Penalty for acting as inspector, before taking oath, &c.

nation between the first and second qualities; and that you will not receive, pass or stamp any hogshead or cask of tobacco, contrary to the true intent and meaning of the laws in such case made and provided; nor refuse any tobacco that, in your judgment, is sound, well conditioned and merchantable, and free from trash; and that you will not change, alter or give out any tobacco other than such hogsheads or casks for which the receipt to be taken was given; but that you will in all things well and faithfully discharge your duty in the office of inspector, according to the best of your skill and judgment, and according to law, without fear, favor or affection, malice or partiality: so help you God." And if any person shall presume to execute his office of inspector, before he shall have given such bond and taken such oath as aforesaid, he shall forfeit and pay five hundred dollars for the use of the county.

Attendance to be given by inspector.

Penalty for neglect.

SEC. 4. *Be it further enacted*, That the inspectors of tobacco shall attend at their respective warehouses whenever called on (Sundays and sickness excepted) by any shipper or raiser of tobacco, to deliver out for exportation such tobacco as remains in the warehouse, and to inspect any tobacco brought in said warehouse; and every inspector neglecting to attend when requested as aforesaid, shall forfeit and pay to the party aggrieved fifty dollars for every neglect, or be liable to an action on the case, at the suit of the party aggrieved, to recover all such damages as he or they shall have sustained by occasion of any such neglect.

Marks, and name of owner of tobacco, to be registered.

How examined, and quality determined.

Each hhd. to be weighed, stamped, and marked with the owner's name, place of inspection, weight and quality.

SEC. 5. *Be it further enacted*, That all persons having tobacco at a public warehouse may have equal justice, the inspector shall enter, in a book to be kept for that purpose, the marks and owners' names of all tobacco brought to their respective warehouses for inspection, in the order in which the same shall be brought in; and such inspector shall view and inspect the same in due time, as it shall be entered in such book, without favor or partiality; and shall uncase and break, in not less than two places, every hogshead or cask of tobacco brought in to be inspected as aforesaid,—and if he shall find the same to be good, well conditioned, merchantable and free from trash, he shall then determine whether such tobacco is of the first or second quality; shall weigh the same in scales with weights of the lawful standard, and shall stamp or mark with a scoring iron the hogshead or cask with the name of the owner, and of the person by whom raised (if known,) the name of the warehouse at which inspected, and also the tare of the hogshead or cask, the quantity of nett tobacco therein contained, and whether the same is of the first or second

Receipt to be delivered to owner.

quality; he shall aso issue a receipt for each hogshead of tobacco he shall pass, if required by the owner, which receipt shall be in the following form, to wit:

Form.

"At ——— warehouse, county of ———, this ——— day of ———, received of ———, ——— hogsheads of leaf, or stemmed (as the case may be) tobacco, of the first, or second, quality (as the case may be,) number, mark and weights as follows: | number | marks | gross | tare | nett | to be delivered to the said ——— or order, for exportation, when demanded. Witness my hand."

Penalty for issuing receipt in different form, &c.

And no inspector shall presume to issue, under any pretence whatsoever, a receipt for any tobacco, other than such as shall be printed, or written in a plain hand, and according to the above form, under the penalty of one hundred dollars, recoverable by any person who will sue for the same.

Tobacco refused, owner may separate good from bad for re-inspection; duty of inspector, if he do not.

Fee of inspector.

Manifest or certificate to be issued.

Penalty for selling or using refused tobacco, without manifest.

Refused tobacco may be inspected at another warehouse.

SEC. 6. *Be it further enacted*, That when any tobacco shall be refused by the inspector, the proprietor thereof shall be at liberty to separate the good from the bad, for re-inspection; but if he refuse so to do, then it shall be the duty of the said inspector to weigh, prize and cooper up the same, and mark the gross weight on each cask, and take care of and deliver the same to the owner; for which the inspector shall receive one dollar for every hogshead so delivered, in addition to the inspection fees hereinafter mentioned: and for the prevention of frauds, the inspector shall grant a manifest or certificate for each hogshead of tobacco so refused, coopered and delivered, specifying the weight of the same, and that the same had been inspected and refused. And if any person shall sell refused tobacco, or manufacture the same, without such manifest, he shall forfeit and pay the sum of fifty dollars for every hogshead so sold or manufactured,—one half to the person suing for the same, and the residue for the benefit of the county in which the offence shall be committed; but it shall be lawful for any person having a hogshead of tobacco refused, to carry the same, with the manifest, to any other warehouse; and the inspector thereat, upon viewing the tobacco, if he esteem it of good quality, first destroying the manifest, he may grant a receipt as is herein before directed, or shall grant another manifest, for which one dollar shall be paid, expressing the review, and that it was the second time refused; after which second refusal, the owner shall not be permitted to carry the tobacco to any other warehouse, for re-inspection,—but may either have the same picked, or sell the same as refused tobacco. accompanying it with the manifest.

Compensation of inspector.

Owners to furnish materials or pay for cooperage.

Inspector to pay storage.

His compensation not to exceed $200.

Residue to be paid into cty. treasury.

Inspector to account, once a year, on oath.

Sec. 7. *Be it further enacted*, That for every hogshead of tobacco, inspected at any of the warehouses established by virtue of this act, the planter or owner of the same shall pay to the inspector fifty cents, whether the same be passed or refused; and for every hogshead shipped from any of the warehouses aforesaid, the shipper or exporter, when he demands the same for exportation, shall pay to the inspector the further sum of seventy-five cents; and the owners of tobacco, shall furnish nails for coopering and heading up their hogshead, or in case of failure so to do, the inspector shall furnish the same, and shall receive from the owner, twenty-five cents for each hogshead coopered up; and the said inspector, out of the money arising from inspection and shipment of tobacco, shall in the first instance pay to the owner or proprietor of the warehouse, seventy-five cents for every hogshead received thereat, as rent for said warehouse, and shall retain the residue for his own compensation, provided such compensation shall in no case exceed two hundred dollars per annum; and whenever the nett profits of the warehouse shall exceed the sum necessary for paying the sums aforesaid, the surplus shall be paid into the county treasury, by the said inspector, for the benefit of the county; and every inspector shall, once a year, at the term of the tribunal transacting county business, of his county, return to the said tribunal a statement of the number of hogsheads of tobacco received at his warehouse during the year, the number passed and the number refused, and the number delivered for exportation; and shall also account to the said tribunal for all moneys received by virtue of his office, and all disbursements made; and shall then and there take the following oath:—I, A. B. do swear, or affirm, (as the case may be) that the account now produced, contains an exact statement of all the tobacco received at and shipped from the warehouse at which I am inspector, all fees received for the inspection and shipment of the same, and all disbursements necessarily made, in the discharge of my office.

Tobacco to be secured at night.

Sec. 8. *Be it further enacted*, That every inspector shall store away and secure, at night, every hogshead of tobacco which he shall have inspected during the day; and shall, in case of negligence, be liable to the action of the proprietor of such tobacco, for all damages accruing thereto by reason of such negligence.

Receipt to be given by new inspector to his predecessor.

Sec. 9. *Be it further enacted*, That when any new inspector shall be appointed, at any warehouse, such inspector shall, and he is hereby required to give to the person whom he shall succeed in office, a receipt, under his hand, containing the numbers, marks, gross, tare, and nett weight, of all and every hogshead or cask of tobacco, which shall be then remaining at the warehouse at which he is appointed inspector, with the delivery of which hogsheads or casks of tobacco so remaining, he thenceforth be chargeable and liable, but he shall in no wise be accountable for the loss of weight or quality of tobacco contained in any hogshead or cask for which receipt was by him so as aforesaid given; and if any hogshead or cask of tobacco, be hereafter received, by any person whatsoever, and delivered out of any warehouse, for exportation, by the inspector attending the same, such inspector, from the time of such delivery, shall be forever discharged and acquitted from all actions, costs, and charges, for or by reason of the tobacco contained in any such hogshead or cask being unsound and unmerchantable, or of less quantity, or of different quality, from that specified in the receipt given for the same, any thing herein contained to the contrary notwithstanding.

Extent of his accountability therein.

Inspectors discharged from liability on delivery for exportation.

Receipts to be given for uninspected tobacco.

Sec. 10. *Be it further enacted*, That the inspectors of tobacco, at the several warehouses within this state, shall, immediately on the delivery of every hogshead of tobacco at the warehouse whereof they are respectively inspectors, give a receipt for such tobacco, if required by the proprietor or person bringing the same to the said warehouse, expressing therein, that the same is for uninspected tobacco; every inspector refusing so to do, shall forfeit and pay to the owner of the said tobacco, five dollars: *Provided*, such delivery is made during the time inspectors are compelled to attend their warehouses.

Penalty for refusing. Proviso.

Inspector's receipt lost, proof to be made, & loss advertised.

Sec. 11. *Be it further enacted*, That if any inspector's receipt be casually lost, mislaid, or destroyed, the person or persons entitled to receive the tobacco, by virtue of any such receipt, shall make oath, before some justice of the peace of the county where the same is payable, to the number and date of every such receipt, to whom and where payable, and for what quality of tobacco the same was given, and that such receipt is lost, mislaid, or destroyed, and that he, she or they, at the time such receipt was lost, mislaid, or destroyed, was lawfully entitled to receive the tobacco therein mentioned; and shall take a certificate thereof from such justice; and shall advertise the loss of such receipt at the court house of the county in which such inspection may be, on the court day, and at the inspection where the tobacco was brought, for four weeks successively; and shall moreover, give bond, with sufficient security, to indemnify the inspector from loss by the claim of the person who may thereafter produce the original receipt, within twelve months after the notice given of the loss thereof; whereupon the inspector shall grant a dupli-

Owner giving bond to indemnify inspector, duplicate receipt to be granted.

cate of the same receipt to the person or persons entitled to receive the tobacco by virtue of such original receipt, and not otherwise; which receipt shall be signed as duplicate: the bond so taken, shall be assignable by the inspector taking the same, to the person producing the original receipt, who may maintain an action of debt thereupon; and such assignment shall exonerate the inspector from any claim or demand against them by virtue of the original receipt: *Provided, nevertheless*, That if principal and security should, at the time of taking such bond, be insufficient, then in that case the inspector shall be responsible for the value of the tobacco, to the person producing such original receipt; and if any person shall be convicted of making a false oath, or procuring a forged certificate, in the case aforesaid, such person shall suffer as in case of wilful and corrupt perjury.

Bond assignable by inspector to the holder of original receipt.

Proviso.

Register of tobacco shipped to be kept, and list furnished to master of vessel.

SEC. 12. *Be it further enacted*, That every inspector shall carefully enter in a book to be kept for that purpose, the marks, numbers, gross, tare and nett weight, of all tobacco, viewed and stamped by them, as herein before directed, and on what vessel or boat the same shall have been put on board; and shall also with every vessel or boat load of tobacco, send a list of the marks, numbers, gross, tare, and nett weight, of every hogshead or cask of tobacco then delivered, to be given to the master of the boat or vessel in which the same shall be embarked.

Stemmed tobacco not laid straight, unlawful

Size of hhd.

Weight.

SEC. 13. *Be it further enacted*, That all stemmed tobacco, not laid straight, whether the same packed loose or in bundles, shall be accounted unlawful tobacco; and no tobacco packed in hogsheads which exceed fifty-four inches in the length of the stave, or thirty-six inches at the head, within the crow, making reasonable allowance for prizing, (which allowance shall not exceed two inches above the guage) in the prizing head, and which shall be bound with eight hoops, shall be passed or received; but the owner of such tobacco, packed in hogsheads or casks of greater dimensions than above expressed, shall be obliged to repack the same, in sizeable casks, before the same shall be passed or stamped by the inspector; nor shall any hogshead be so passed or stamped, unless the nett weight thereof shall be at least eight hundred pounds.

Penalty for shipping refused tobacco.

How recov-

SEC. 14. *Be it further enacted*, That any person who shall ship any refused tobacco, unless it shall have been re-inspected and passed, as is provided for in this act, shall forfeit and pay twenty-five cents for every pound of tobacco so shipped, which shall be recovered in a court of law having jurisdiction thereof, in this state; and it shall be lawful for any person to sue for the same; and the informer or person suing, shall have half of any money so forfeited and recovered, and the residue shall be paid into the county treasury, for the benefit of the county in which the offence shall be committed: *Provided*, That nothing herein contained shall be so construed as to prohibit the owner of such refused tobacco, or his or her agent, from picking and reprizing the same at his discretion.

ered and appropriated.

Proviso.

Sec. 15. *Be it further enacted*, That any inspector who shall alter, change, or deliver out, any hogshead of tobacco other than the one for which the receipt to be taken in was given, shall forfeit and pay the sum of one hundred dollars for every hogshead so altered, changed, or delivered out; and if any inspector shall fail or refuse to deliver any hogshead of tobacco, when the same shall be demanded for exportation, who shall deliver such tobacco without an order from the owner thereof, he shall in either case forfeit to the owner, double the value of the tobacco which he shall so refuse to deliver, or deliver wrongfully.

Penalty, for changing any hhd. of tobacco.

For refusing to deliver out when demanded.

Sec. 16. *Be it further enacted*, That any inspector who shall take, accept, or receive, directly or indirectly, any gratuity, fee, or reward, for any thing by him so done in in pursuance of this act, other than the payments and allowances herein before mentioned and expressed, upon being convicted thereof, shall forfeit and pay the sum of one hundred dollars, to be recovered, with costs, to the use of the county wherein the offence shall have been committed, and shall moreover be removed from office; and if any person shall offer any bribe to any inspector for any thing by him to be done in pursuance of this act, other than the payments and allowances herein before mentioned and expressed, such person so offending, upon being thereof convicted, shall forfeit and pay one hundred dollars, for the use of the county wherein the offence shall have been committed.

Inspector receiving fee or reward not specified by law, penalty.

Offering bribe to inspector.

Penalty.

Sec. 17. *Be it further enacted*, That any person who shall alter or change the face of a note for passed or refused tobacco, or who shall alter or cause the stamps or marks on any hogshead of inspected tobacco, whether passed or refused, shall be deemed guilty of forgery, and punished as in other cases of forgery.

Altering note or marks, &c. of tobacco deemed forgery.

Sec. 18. *Be it further enacted*, That any person who shall erect a warehouse in pursuance of this act, shall, in addition to the requisitions hereinbefore mentioned, be required to erect a strong and sufficient prize within the same, to have a close comfortable room with a fire place and lock, for the use of the inspector, and also to provide a pair of strong scales or patent balances, and correct weights to weigh at least fifteen hundred pounds.

Owners of warehouses to erect a prize, and provide scales and weights, &c.

Sec. 19 *Be it further enacted*, That the tribunal trans-

Commissioners of warehouses to be appointed.

Duty.

acting county business, of counties wherein one or more warehouses shall be erected, shall at the term whereat the appointments of inspector is made, appoint a discreet house holder of ability and integrity, to act as commissioner of warehouses for one year; whose duty it shall be to see that the warehouses in his county are kept in good repair, that proper scales and weights are provided, kept in repair and examined and compared with the standard weights of the county, once in six months at least to visit semi annually, every warehouse in his county, and see that the tobacco therein is properly stored away and secured, and that the inspectors diligently discharge their duty, and if he shall discover in any inspector any negligence or breach of his duty, he shall report the same to the tribunal transacting county business at the next term thereof, whereupon said inspector shall be proceeded against according to law; and the commissioner so appointed, shall be allowed two dollars for every day he shall be necessarily employed in performing the duties prescribed by this act, to be paid of the county treasury: *Provided*, That such compensation shall not exceed thirty dollars in any one year.

Inspectors exempt from militia duty.

SEC. 20. *Be it further enacted*, That the inspectors of tobacco under this act, shall be, and they are hereby exempted from militia duty except in case of actual invasion, and insurrection, and also from serving on juries.

Penalties, how recovered and appropriated.

SEC. 21. *Be it further enacted*, That all penalties and forfeitures in this act contained, the mode of recovery and application of which are not specially set forth, shall be recovered by action of debt at the suit of the county treasurer, and shall be applied to lessening the county tax.

Tobacco may be inspected at private warehouse, if no public warehouse is erected.

Inspector to have control of warehouse

Penalty on owner suffer-

SEC. 22. *Be it further enacted*, That if before the erection of a public warehouse in any county, the quantity of tobacco raised or brought therein, shall, in the opinion of the tribunal transacting county business, require the appointment of one or more inspectors, the same shall be appointed, and when appointed may proceed to examine and inspect any tobacco which may be lodged in any private warehouse, and shall pass or refuse the same, and do all other acts that are required by this act, in case of inspection in public warehouses, and such inspection shall be, to all intents and purposes, legal. The owner of such private warehouse shall not suffer any tobacco to be removed after inspection, unless by order of the inspector, who shall have as complete control over the same, as if it were stored in a public warehouse, and shall be responsible in the same manner to the owner thereof; and any proprietor or owner of a private warehouse, in which tobacco has been inspected and stored, who shall deliver or suffer the same to be removed without an order from the inspector as aforesaid, shall forfeit double the value of the tobacco so delivered or suffered to be removed, to be recovered by the inspector for the benefit of the owner of such tobacco: *Provided*, That there shall be no tobacco inspected in a private warehouse, where there is a public one erected in the same county, and prepared for the reception and inspection of tobacco: *Provided*, It shall be lawful for any citizen of this state who wishes to export tobacco without inspection, to do so, any law to the contrary notwithstanding. This act shall be in force from and after the passage thereof. [*Approved, January 17th*, 1825.]

ing tobacco to be removed without order.

Proviso.

Any person may export tobacco without inspection.

INTEREST.

AN ACT regulating the Interest of Money.

19 Feb. 1825.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That creditors (excepting as is hereinafter specified) shall be allowed to receive interest, at the rate of six per centum per annum, for all moneys, after they become due on bond, bill, promissory note, or other instrument of writing,* from the day of signing judgment until effects be sold, or satisfaction on such judgment be made: likewise on money lent; on money, for the forbearance of the payment whereof an express promise hath been made, for the payment of interest on money due on the settlement of accounts, from the day of liquidating accounts between the parties and ascertaining the balance; on money received to the use of another, and retained without the owner's knowledge; and on money withheld by an unreasonable and vexatious delay of payment.

Rate of interest 6 p. c. per annum.

SEC. 2. No person or persons shall, on any contract which shall be made, directly or indirectly, take for the loan or use of money or other commodity, above the value of six dollars for the forbearance of one hundred dollars or the value thereof, for one year; and so proportionably for any greater or lesser sums, any law, custom or usage to the contrary notwithstanding: *Provided*, That where the parties expressly agree that any obligation shall bear interest, not exceeding the rate of ten per centum, shall be deemed legal, any thing in this section to the contrary notwithstanding; and the several courts in this state are hereby required to give judgment accordingly.

No person to take more than 6 p.cent

But special agreement for interest at 10 p. ct. valid

SEC. 3. If any person shall, directly or indirectly, receive any money, obligation, promise, or other commodity, by way of premium, or any other name by which the same

If more than legal interest be contracted for, deft.

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*There is evidently an omission in the original roll, from which this is correctly copied; the words omitted are probably, "on any judgment recovered."

may plead special matter.

may be called or understood, to the end of obtaining any higher rate of interest than six per centum per annum for the loan or use of any money or any other commodity (except as is herein before provided) on any contract which shall hereafter be made, and shall institute an action for the recovery of the money due on or by reason of the breach of such contract so as aforesaid made, it shall be lawful for the defendant in such action, in pleading, to set forth special matter in bar of so much of the real sum of money, or price of the commodity, actually lent, advanced or sold, as shall be the amount of the aforesaid premium or sum actually received. And if the plea of the defendant is confessed, or adjudged good on demurrer, or supported by the verdict of a jury, then and in every such case the plaintiff shall recover no more than what remains of the aforesaid sum of money, or price of the commodity, actually lent, advanced or sold, after deducting the said premium, without even any interest on the principal; and if a residue is still left, the plaintiff may enter judgment for the same, and have execution with interest and costs accruing from the signing of the judgment: *Provided, always,* That if the premium or usurious interest and costs exceed the principal or real sum of money, or the price of the commodity, actually lent, advanced or sold, the excess shall be deemed a debt of record; and on motion of the defendant, made in open court, such defendant may enter judgment for the same, with costs, at the next or any subsequent term within the year, and have execution accordingly. [*Approved, February* 19, 1825.]

Premium to be deducted, and plaintiff recover only the balance without interest.

JUDGMENTS AND DECREES.

16 Feb. 1825.

AN ACT relating to Judgments and Decrees.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That judgments and decrees, obtained in the supreme court, shall be a lien on the real estate of the person or persons against whom the same is rendered, situated in any part of the judicial district for which the court is held; and judgments and decrees rendered by circuit, probate, and county courts, shall be a lien on the real estate of the person or persons against whom they are rendered, situated in the county for which the court is held; which lien shall commence on the day of the rendition of the judgment or decree, and shall continue for the period of three years thereafter, and no longer, unless the said lien be revived as hereinafter provided.

Lien of judgments and decrees in supreme court.

In circuit, probate and cty. courts.

SEC. 2. *Be it further enacted,* That the sale of lands under a junior judgment, shall pass the title of the defendant, subject to the lien of all prior judgments then in force, and the money arising from such sale shall be applied to the payment of the judgment under which it may have been made, and the sheriff or other officer offering real estate for sale under any judgment or decree, he shall state that the same is to be sold, subject to the lien of all prior judgments and decrees.

Sales under junior judgt. subject to prior liens.

Duty of shff.

Sec. 3. *Be it further enacted*, That it shall be lawful for the plaintiff in any judment or decree, or his legal representatives, at any time before the expiration of the lien of such judgment or decree, to sue out of the court in which the same was rendered, a *scire facias* to revive the same, which *scire facias* shall be served on the terre tenants, or other persons occupying or possessing the lands or tenements bound by the judgment or decree, and on the defendant, his heirs, or executors, or administrators and assigns; which *scire facias* may be directed to, and executed by, the sheriff of any county in which any of the defendants therein may be found; and where they reside in different counties, a separate writ may be directed to each of the said counties. And if the defendants, or any of them, cannot be found, the court may make an order, setting forth, briefly, the nature of the case, and requiring all persons interested therein to shew cause why such judgment or decree should not be revived, and the lien thereof continued, on or before the third day of the next term of such court; which order shall be published in some newspaper printed in this state, for three weeks successively, the last insertion to be at least two weeks before the commencement of the term at which the parties are required to appear; and if, upon due service of the *scire facias*, or upon publication as aforesaid, the defendant, or any of his creditors, do not appear, or appearing shall not shew sufficient cause against the reviving the judgment or decree, and continuing the lien, within the time in which they are required to appear and shew cause, the court shall revive the judgment or decree, and continue the lien during another period of two years, from the day of reviving the same, and so on, from time to time, as often as may be necessary.

Lien of judgments and decrees may be revived & extended.

Scire facias, and proceedings thereon.

Order of publication in certain cases

Sec. 4. *Be it further enacted*, That where there are several plaintiffs in any judgment or decree, and one or more of them die, before the same is satisfied or carried into effect, such judgment or decree, if for money, or concerning personal property, shall survive to the executors or administrators of the deceased plaintiff or plaintiffs, and if concerning real estate, to his or their heirs or devisees; and execution may be sued in the name of the surviving

Where there are several plaintiffs, some of whom die, judgment, &c survives. When to the ex'rs. or administrators.

When to the heir or devisee, execution how to issue.

If several defendants, & some die, judgt. &c. survives.

Execution how to issue.

plaintiff or plaintiffs, for the benefit of himself or themselves, and the legal representatives of the deceased plaintiff or plaintiffs; or the judgment or decree may be revived in the name of such legal representatives, and the surviving plaintiff or plaintiffs, and execution sued by them jointly. And where there are several defendants in any judgment or decree, and one or more of them die, before the same is satisfied or carried into effect, such judgment or decree, if for money or concerning personal estate, shall survive against the executors or administrators of such deceased defendant or defendants; and if concerning real estate, against his or their heirs or devisees; and execution may be sued in the name of the surviving plaintiff or plaintiffs, for the benefit of himself or themselves, and the legal representatives of any deceased plaintiff or plaintiffs, or by the surviving plaintiff or plaintiffs, and the representatives of any deceased plaintiff or plaintiffs, against the surviving defendant or defendants; or such judgment or decree may be revived against the representatives of any or all such deceased defendants by *scire facias*, sued in the name of the surviving plaintiff and the representatives of such as are deceased (if any,) and execution may be sued against the surviving defendant or defendants, and the representatives of such deceased defendants, or such of them as are made parties jointly.

Where ex'rs. or adm'rs. parties, die, resign, &c. judgt. to be revived in the name of adm'r. de bonis non.

SEC. 5. *Be it further enacted*, That in all cases where any executors or administrators shall be plaintiff or defendant in any judgment or decree, and shall die, resign, or be dismissed, before the same is satisfied or carried into effect, the said judgment or decree may be revived by or against the administrator *de bonis non*, in manner aforesaid.

Acknowledgment of satisfaction to be recorded by clerks.

SEC. 6. *Be it further enacted*, That the clerks of the several courts of record shall be and they are hereby empowered to take and record, among the records of their respective courts, all acknowledgments of the satisfaction of any judgment or decree rendered in their respective courts, and which shall be made before them, in the manner hereinafter provided.

Plff receiving satisfaction, to acknowledge the same, in what manner.

SEC. 7. *Be it further enacted*, That whenever any person, in whose favor any judgment or decree now is or hereafter shall be rendered in any court of record of this state, shall have received satisfaction of such judgment or decree, he shall forthwith, by himself or attorney of record, make an acknowledgment of satisfaction before the court in which such judgment or decree was rendered, or the clerk in vacation; which acknowledgment shall be entered by such clerk upon the minutes of the court, and, if made in vacation, shall be signed by such party or his attorney, and attested by the clerk; or the party receiving satisfaction of any judgment or decree, may sign, seal, and deliver to any person whom he may think proper to appoint, a warrant of attorney, reciting the judgment or decree, and authorizing such attorney to acknowledge satisfaction thereof; which, being acknowledged or proved in the same manner as is or shall be required in case of conveyances for lands, or other real estate, and produced before the court wherein such record of the judgment remains, or delivered to the clerk thereof in vacation, the acknowledgment may be taken in manner aforesaid, and the warrant of attorney filed and preserved by the clerk, with the declaration and other papers in the cause, and every entry of satisfaction, made as aforesaid, shall forever after discharge, defeat, and release the judgment or decree, and bar all actions brought, or to be brought thereon.

If party receiving satisfaction refuses to acknowledge the same, court may cause satisfaction to be entered.

Sec. 8. *Be it further enacted*, That if any party, who shall have received full satisfaction of any judgment or decree as aforesaid, shall neglect or refuse, within a reasonable time after request of the defendant, or his legal representatives, or other person concerned or interested therein, to acknowledge satisfaction on the record, or cause the same to be done as aforesaid, the party so making satisfaction, or other person interested, may, on due notice given, apply to the court to have satisfaction entered; and the court may order the satisfaction to be entered by the clerk, with the like effect as if acknowledged in manner aforesaid: and the party so neglecting or refusing to enter satisfaction shall be adjudged to pay the costs of the proceeding, to be recovered by execution as in other cases.

At cost of the plaintiff.

In recording judgments & decrees, margin to be left.

Sec. 9. *Be it further enacted*, That it shall be the duty of the clerks of the several courts of record, in entering or recording any judgment or decree, to leave sufficient space in the margin of the record for entering a note or memorandum of the satisfaction, or setting aside such judgment or decree; and when satisfaction shall be acknowledged as aforesaid, or entered by the order of the court, or satisfaction shall be made by execution, or such judgment or decree shall be set aside, the clerk shall enter upon the margin of the record of the judgment or decree so satisfied, or set aside, a short note or memorandum of the disposition thereof, the date, the book and page in which the evidence thereof is entered or recorded.

Entries to be made thereon.

Docket of judgts and decrees to be kept by clerk.

Sec. 10. *Be it further enacted*, That the clerks of the several courts of record in this state, shall provide and keep in their several offices a well bound book, for entering therein an alphabetical docket of all judgments and decrees rendered in their respective courts; and it shall

Clerk to enter therein all judgts. and how.

be the duty of the said cle[illegible] during every term, or within thirty days thereafter, to enter in such docket all final judgments and decrees rendered at such term, in alphabetical order, by the name of the person against whom the judgment or decree was entered,—which shall contain, in columns ruled for that purpose, the names of the parties, the date, the nature of the judgment or decree, the amount of the debt, damages and costs, the book and page in which it is entered, and leaving a blank column or columns for entering a note or memorandum of the satisfaction, or other disposition thereof; and when any judgment or decree shall be satisfied by execution or otherwise, or shall be set aside, the said clerk shall enter a memorandum thereof, in the column left for that purpose, showing how disposed of, the date, book and page in which the evidence thereof is entered or recorded: and such dockets may be searched by all persons, at reasonable times, without fee.

Entry of satisfaction, &c.

Penalty for failing to keep docket or make entries.

And every clerk who shall fail to keep such docket, or to enter thereon any judgment or decree as aforesaid, he shall forfeit and pay a sum not exceeding one hundred dollars, in the discretion of the court of which he is clerk, to the use of the county in which the court is held.

Decrees for conveyance of lands to be recorded in recorder's office.

Sec. 11. *Be it further enacted*, That when there shall be a decree in any court of chancery, decreeing a conveyance of any lands, tenements or hereditaments lying in any county in this state, the party to whom the same shall be so conveyed shall record the said decree in the recorder's office, in the same manner as deeds of lands are directed by law to be recorded; and unless the same shall be so recorded within three months after the rendition of such decree, if the party to whom the conveyance is decreed live within this state, or within twelve months, if he live without this state, it shall not be binding, as against any person not a party thereto, or who shall not have had notice of such decree, so as to effect any conveyance of such lands made subsequent to such decree.

[*Approved, February* 16, 1825.]

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JURORS.

14 Feb.1825.

AN ACT concerning Grand and Petit Jurors.

Court may direct jurors to be summoned.

Sec. 1. *Be it enacted by the General Assembly of the state of Missouri*, That the several courts within this state, before whom juries are required, are hereby authorized to direct the respective sheriffs to summon a sufficient number of persons to perform the duties of jurors.

Qualification of grand jurors.

Want of qualification a cause of challenge.

SEC. 2. *Be it further enacted*, That every person who shall be summoned to serve as a grand juror, shall be a citizen of this state, and resident within the county, and above the age of twenty-one years, and be a householder, or have a freehold in lands, messuages or tenements, in the county for which he shall be returned; and if any person not so qualified, shall be summoned to serve as a grand juror, it shall be a good cause of challenge to such juror, who shall be discharged upon such challenge being verified and substantiated according to law, or on his own allegation and oath or affirmation in support thereof.

Grand jurors to be summoned six days before the term.

SEC. 3. *Be it further enacted*, That every summons of any grand juror, shall be made by the sheriff or his lawful deputy, either personally to, or in writing under his hand left at the dwelling house of such grand juror, at least six days before the first day of the court at which his attendance is required.

In case of sickness, death or non-attendance of a grand juror, others to be sworn.

SEC. 4. *Be it further enacted*, That in case of the sickness, death, or non-attendance, of any grand juror or grand jurors, after he or they shall have been sworn or affirmed, it shall be lawful for the court, at their discretion, to cause another or others to be sworn or affirmed in his or their stead.

Grand juror may be indicted by the jury of which he is a member—proceedings.

SEC. 5. *Be it further enacted*, That every grand juror shall be liable to be indicted by the grand jury of which he is a member, the same as though he did not belong to that body; but whenever any complaint shall be lodged against any member of the grand jury, the foreman thereof, before proceeding with the said complaint, shall acquaint the attorney prosecuting for and on behalf of the state, of the same; and if the said attorney, on examination, shall be of opinion that there are any good grounds for proceeding against such grand juror, he shall inform the court thereof; and thereupon the said court shall discharge such grand juror, and cause another to be sworn in his place if necessary.

Qualification of petit jurors.

Cause of challenge.

Exception, when to be taken.

SEC. 6. *Be it further enacted*, That every petit juror shall be a free white male citizen of this state, and resident within the county, above the age of twenty-one years; and if any person who is not so qualified, shall be summoned as a petit juror, it shall be a good cause of challenge to such juror, who shall be discharged upon such challenge being verified and substantiated according to law, or on his own allegation and oath or affirmation in support thereof: *Provided*, That no exception against any such juror on account of his citizenship, non-residence, estate, or age, or other legal disability, shall be allowed after he is sworn or affirmed.

Who exempt from serving.

SEC. 7. *Be it further enacted*, That no person exercising the functions of a clergyman, practitioner of physic, attorney at law, sheriff, clerk of a court, ferry keeper, overseer of roads, constable, judge of any court of record, or any person above the age of sixty-five years, within this state shall be compelled to serve on any grand or petit jury.

Service to be equalized.

Persons of ill fame, &c. to be avoided.

SEC. 8. *Be it further enacted*, That the task of serving on juries, shall be as nearly equalized as practicable among the citizens liable to be summoned on such juries; and in order the more effectually to obtain the impartial administration of justice, the several courts may direct the several sheriffs in summoning juries to avoid persons of ill fame, or those who labor under the undue influence of either of the parties.

Fine for non-attendance.

SEC. 9. *Be it further enacted*, That every person summoned by the sheriff to serve as a grand or petit juror who shall fail to attend agreeably to such summons, shall be fined, not exceeding ten dollars, unless a satisfactory excuse is offered.

Penalty on officers receiving reward to excuse any person from service.

SEC. 10. *Be it further enacted*, That no sheriff, coroner, or other officer, or any deputy of such sheriff, coroner or other officers, shall directly or indirectly take, accept, or receive, any money, or other reward or thing, to excuse any person from serving or being summoned or returned to serve on any jury or inquest, or under that color or pretence, on pain of forfeiting one hundred and fifty dollars for every such offence, the one moiety to the state, and the other moiety to any person who shall prosecute for the same; to be recovered, with costs, by action of debt, in any court of record having cognizance thereof.

Peremptory challenge allowed

Eighteen jurors to be returned, if required.

To what cases this section shall or shall not extend.

SEC. 11. *Be it further enacted*, That in all cases of trial by jury, each party shall hereafter be allowed the privilege of challenging peremptorily to the number of three of the jurors; and either party may require of the sheriff to return a pannel of eighteen jurors in the first instance: this section shall not apply to proceedings before justices of the peace for the collection of small debts, but shall extend to all other cases, civil and criminal, except to those where a greater challenge is allowed.*

[*Approved*, *February* 14, 1825.]

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*The accused has a peremptory challenge of twenty in cases punishable with death or imprisonment for life, and of ten in cases punishable by stripes, standing in the pillory, or imprisonment exceeding one year.—*See Crimes and Misdemeanors, Chap.* 2, *Sec.* 22, *ante page* 320

JUSTICE OF THE PEACE.

AN ACT prescribing the powers and duties of Justices of the Peace and the manner of their appointment.

4 Jan. 1825.

Not exceeding four to be appointed in each township.

Power and jurisdiction as conservators of the peace.

*May proceed to try them in certain cases; see Assault and Battery.

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri*, That there shall, from time to time, be appointed and commissioned, in each township within this state, a suitable number of fit and discreet persons, as justices to keep the peace, not exceeding four for any one township, who shall have power throughout their respective counties, jointly and severally, to cause to be kept all laws made for the preservation and good of the peace, and cause to come before them, or any of them, all persons who shall break the peace, and commit them to gaol or bail them as the case may require;* and also, to cause to come before them all persons who shall threaten to break the peace, or who be not of good fame to find sufficient security for the peace or for their good behaviour, or both, as the case may require; and if they refuse to find such security, to commit them to prison until they shall find the same, and every recognizance so taken for the keeping of the peace, or for good behaviour, shall be certified and sent or brought by the justice taking the same, to the next circuit court, to be holden in and for the county in which he is a justice; and further, to perform and execute all such matters, acts and things as by law appertain to their office, and are or shall be enjoined upon them and committed to their charge and execution.

How recommended, appointed, and commissioned.

SEC. 2. *Be it further enacted*, That it shall be the duty of the several tribunals having the transaction of county business, of the respective counties, whenever a petition signed by at least twenty free white male inhabitants and householders of any township, being twenty one years of age and upwards, [shall be presented to them] praying for the appointment of one or more justices of the peace for such township; or when any township shall be without a justice of the peace; or when any vacancy shall occur, which, in the opinion of said tribunal ought to be filled; or when the said tribunal shall deem it expedient and necessary that an additional justice, or additional justices, should be appointed in any township, to recommend to the governor (immediately after said petition shall have been presented, and in other cases provided for, so soon as such case shall occur) the number of persons necessary to be appointed in any township, giving to the governor the names of the persons so recommended; and it shall be the duty of the governor or other person exercising the office of governor for the time being, forthwith to commission the number of persons, so recommended as justices of the peace, for the township in the county for which they may have been recommended.

Oath to be taken within 20 days after receiving commission.

Governor to endorse notice on the commission.

Oath, by whom administered; to be endorsed.

SEC. 3. *Be it further enacted*, That the several persons so appointed justices of the peace shall, within twenty days after the receipt of their commissions, take an oath or affirmation to support the constitution of the United States of America, and the constitution of the state of Missouri, and faithfully to demean themselves in their offices, without partiality, favor or affection, so long as they shall continue therein. And it shall be the duty of the governor to endorse on the back of every commission that the person for whom the said commission is intended, shall qualify according to law, within twenty days after the reception of the same, and in default of such qualification said commission shall be void; which said oath or affirmation of office may be administered by any judge, or clerk of any court of record, or justice of the peace, to be endorsed on said commission by the person administering the same.

Commissions to be transmitted to clk. of county court.

Clerk to distribute them.

To be recorded with the oath thereon endorsed.

Failure to do so deemed a refusal.

SEC. 4. *Be it further enacted*, That all commissions hereafter issued to justices of the peace, shall be transmitted by the secretary of state, by mail or private conveyance, to the clerk of the tribunal transacting county business for the county for which such justices are appointed; and it shall be the duty of such clerk, immediately after the receipt of such commission, to cause the same to be delivered to the person thereby commissioned. And it shall be the duty of every person so commissioned, within thirty days after receiving such commission, and before entering upon the discharge of his duties, to cause the same, with a certificate of the taking of the oath required by this act, endorsed thereon, to be recorded in the office of the clerk of the tribunal aforesaid, which shall be deemed an acceptance of such appointment; and every such person, who shall fail to cause his commission and certificate to be recorded as aforesaid, within the time aforesaid, shall be deemed and taken to have refused such appointment.

Term of service & causes of removal.

Punishment for misdemeanor, &c.

SEC. 5. *Be it further enacted*, That the said justices of the peace shall continue in office during the term of four years from the date of their commission, unless sooner removed therefrom on conviction for bribery, perjury, or other infamous crime, or on conviction for any wilful misdemeanor in office, by indictment in the circuit court; and in case of conviction for bribery, perjury, or other infamous crime, shall be and for ever remain disqualified to hold any office of honor, trust or profit under the state; and in case of conviction for any wilful misdemeanor in office, shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court, and shall, moreover, be removed from office. And it shall be the duty of the court sentencing any justice of the peace to be removed from office, immediately to cause a copy of such sentence to be made out, certified, and transmitted to the office of the secretary of state, and a like certificate to the clerk of the court transacting county business for the proper county.

All acts done before oath taken, and commission recorded, declared void.

Penalty for acting before qualification.

Sec. 6. *Be it further enacted*, That if any person so appointed and commissioned as justice of the peace, shall, upon any pretence whatever, presume or attempt to exercise any of the powers or duties of a justice of the peace, previously to taking the necessary oath or affirmation, and also having his commission recorded, as herein prescribed, every such act or acts shall be deemed null and void; and the said justice or person pretending to exercise the powers and duties of a justice of the peace, shall, moreover, on being found guilty (on indictment) of any of the offences aforesaid, be fined by any court having competent jurisdiction thereof, in a sum not exceeding one hundred dollars, at the discretion of the court, to the use of the county.

May issue subpœnas for witnesses to attend before courts, arbitrators, &c.

Sec. 7. *Be it further enacted*, That every justice of the peace, within this state, shall and he is hereby empowered to grant subpœnas for witnesses, in all cases cognizable before the circuit and county courts, in all cases cognizable before a justice of the peace, and in all matters submitted to referees or arbitrators, and in all cases where it may be necessary for the taking depositions; which subpœnas may be directed to any constable in the township where the witness resides, if within the same county with the justice issuing the subpœna; which said constable is hereby empowered to serve and return the same.

Resignations how made, & addressed.

Dockets, records, &c. to be delivered to clerk, in case of resignation, removal from office, or death.

Sec. 8. *Be it further enacted*, That all resignations of the justices of the peace, shall be in writing, and addressed to the tribunal transacting county business, or the clerk thereof in vacation; and every person so resigning, or whose office shall be otherwise vacated, shall, at the time of delivering such resignation, deliver to the said court or clerk all dockets, records, papers and documents, appertaining to his office, relating to any suit, matter, or controversy committed to him, in his official capacity; and in case of the death of any justice of the peace, it shall be the duty of his executors or administrators, within sixty days after obtaining their letters, to deliver over in manner aforesaid, all such dockets, record, papers, and documents; and if any such person, his executors or administrators, shall fail to deliver over, in manner aforesaid, any such docket, record, paper, or document, as herein before required, he shall forfeit and pay to the use of the county, a sum not exceeding fifty dollars, to be recovered by indictment.

Clerk, how to dispose of dockets, papers, &c.

SEC. 9. *Be it further enacted*, That it shall be the duty of the clerk of the tribunal transacting county business, whenever he shall receive any dockets, records, papers, or documents, as aforesaid, to give the person delivering the same, a receipt therefor; and he shall, moreover, without delay, cause all such dockets, records, papers, and documents, as relate to such process, proceeding, matter, or thing, pending and undetermined, to be delivered to some justice of the peace of the same township in which the vacancy happened.

Clk. recording commission to certify acceptance to governor.

SEC. 10. *Be it further enacted*, That it shall be the duty of the clerk of the tribunal transacting county business in each county, when he shall record the commission of any justice of the peace, as aforesaid, to certify to the governor the acceptance of such commission, and the date of the oath thereon endorsed, with the day of recording the same; and upon the happening of any vacancy in the office of justice of the peace, the said clerk shall, without fee, certify such vacancy to the governor, particularly specifying the time when the vacancy occurred, and the cause, matter or thing occasioning the vacancy; which several certificates shall be attested by his seal of office, and be transmitted without delay, by mail or private conveyance, to the office of the secretary of state.

Vacancies to be certified.

Appointment of first justices.

SEC. 11. *Be it further enacted*, That the first justices of the peace to be appointed in the several counties now established, and the first justices of the peace to be appointed and commissioned in any county hereafter established, shall be appointed and commissioned by the governor; and the several justices of the peace now in office, and who shall not be appointed according to the provisions of this act, shall be and they are hereby superseded in their offices, respectively, from and after the fourth day of July next.

Justices in office on 4th Jan. superseded after 4th July, 1825.

[*Approved, January 4th*, 1825.

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19 Feb. 1825.

AN ACT supplementary to an Act entitled "An Act prescribing the powers and duties of Justices of the Peace, and the manner of their appointment.

Two additional justices to be appointed for St. Louis township.

Be it enacted by the General Assembly of the state of Missouri, That there may be appointed, and commissioned, an additional number of two justices of the peace in the township of St. Louis, in the county of St. Louis, in the same manner and with the same powers as is provided in the act to which this is a supplement.

[*Approved, February* 19, 1825.]

JUSTICES' COURTS.

AN ACT establishing Justices' Courts, and regulating the collection of small debts.

4 July, 1825.

Jurisdiction in civil cases

SEC. 1. *Be it enacted by the General Assembly of the state of Missouri,* That all actions of debt, covenant, assumpsit, book account, and other actions arising on contracts, wherein the sum or balance due, or damages or thing demanded, shall not exceed ninety dollars; and all actions of trespass on the case, for tort; and actions of trespass, including trespass on lands or other real estate, wherein the damages demanded shall not exceed fifty dollars, shall be cognizable before a justice of the peace: *Provided, always,* That no justice of the peace shall have cognizance as aforesaid, of any action, where the title of any lands shall in any wise come in question, except actions of trespass on lands as aforesaid; nor of any action of replevin, detinue, false imprisonment, slander or malicious prosecution.

Extent of jurisdiction.

Where suits to be brought

No person to be held to bail out of his township.

SEC. 2. *Be it further enacted,* That justices of the peace shall have jurisdiction throughout their respective counties; but no suit shall be brought under this act, except in the township where the defendant resides, or in the township in which the plaintiff resides, if the defendant be found therein; but no person shall be arrested or held to bail out of the township in which he resides.

Security for costs may be required, in certain cases

SEC. 3. *Be it further enacted,* That in all cases where the plaintiff in any action brought before a justice of the peace is not a resident of the county in which the action is brought, in such case he may be bound to give security for the costs, if demanded by the defendant or justice.

Process to be a summons, except, &c.

SEC. 4. *Be it further enacted,* That the first process in all cases under this act (except as hereinafter excepted) shall be by summons; which summons, as near as circumstances will admit, shall be in the form following, viz:

Form.

THE STATE OF MISSOURI,

To the constable of —— township, in the county of ——, Greeting:

You are hereby commanded to summon A. B. to appear before the undersigned, one of the justices of the peace within and for said county, on the —— day of ——, at ——, in the township of ——, in said county, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the said day, to answer to C. D. in an action of debt (or other form of action, as the case may be.) Given under my hand, this —— day of ——, 18—.

E. F., *Justice of the Peace.*

Statement of the cause of action to be

SEC. 5. *Be it further enacted,* That in all suits, a brief statement of the cause of action, and the amount claimed, filed, and accompany summons.

shall be made in writing, and filed with the justice; and the same, or a copy, annexed to the summons as aforesaid: but form in such statement shall not be regarded, so as the same be sufficient to apprize the defendant of the nature of the claim against him. The return day of the summons shall not be more than thirty days, nor less than eight days after the date of the same. The service thereof shall be by reading the original summons, and the complaint or statement annexed thereto, in the hearing of the defendant; or by leaving a copy of the same at his dwelling house or usual place of abode, in the presence of one or more white persons of his family, above the age of fifteen years, at least six days before the time of hearing.

Summons, when returnable.

Service, how and when.

Return day once a month, when all trials shall be had.

SEC. 6. *Be it further enacted*, That the several justices of the peace in this state shall make all summonses returnable before them, once a month; and shall appoint one day in each month, which day shall be named in each summons by them issued, for the hearing and determining all matters in controversy between plaintiff and defendant. And the said justices shall not hear or determine any matter in controversy, where the suit shall be instituted by summons as aforesaid, on any other day except it be by consent of parties, or unless the justice shall adjourn for the want of time to try the same on the day appointed in the summons.

Warrant to be issued on affidavit filed

SEC. 7. *Be it further enacted*, That if the plaintiff, or his agent, file an affidavit, [stating] that the defendant is justly indebted to him, that he has reason to believe that the defendant is about to abscond or remove out of the county, and that he is in danger of losing his debt, in such case it shall be the duty of the justice to grant a warrant; which shall be, as near as circumstances will admit, in the following form, viz:

Form of warrant.

THE STATE OF MISSOURI,

To the constable of ——— township, in the county of ———, Greeting:

You are hereby commanded to take A. B. and bring him forthwith before the undersigned, a justice of the peace in and for the county of ———, to answer C. D. in an action of debt (or other form of action, as the case may be.) Given under my hand, this ——— day of ———, 18—.

E. F., *Justice of the Peace.*

If there be no justice in a township, or all interested &c. process may be issued by J. P. of adjoining township.

SEC. 8. *Be it further enacted*, That in all cases where there shall not be a justice of the peace residing in any township, in any county in this state, or where any justice, if but one, or justices, if more than one, shall be interested in any suit or action made cognizable by this act before a justice of the peace, it shall be lawful for any person or persons to apply for and obtain a warrant, or summons, as the case may be, from any justice of the peace of an adjoining township in the county; and it shall be the duty of such justice to grant and issue the same accordingly. And the said justice is hereby authorized and empowered to hear and determine the said suit or action, give judgment, and issue execution thereon, in the same manner as if such defendant or defendants were residents in his proper township; which warrant or summons, and execution, shall be directed to the constable of the township in which such justice resides, who is hereby required to execute the same.

Docket to be kept by justices.

Copies to be given by clk. in certain cases.

***Copies certified by the justice are to be received in evidence; see "Evidence," sec 3**

Sec. 9 *Be it further enacted*, That it shall be the duty of every justice of the peace to keep a docket, in which he shall make fair and accurate entries of all suits and actions instituted before him, with his proceedings thereon; and when the docket, files, books, papers and records, of any justice of the peace, shall be delivered to the clerk of the county court according to law, the said clerk is hereby authorized to give certified copies of the files and entries thus deposited with him, which shall be as valid to all intents and purposes as though the same had been made by the said justice during his continuance in office.*

Justice may deputize person to serve process in certain cases.

Sec. 10. *Be it further enacted*, That if it shall be made to appear to any justice of the peace that any writ or process by him issued, may fail of service for want of a proper officer seasonably to be had, such justice is hereby empowered to deputize any suitable person, other than the plaintiff, to serve and return the same, by endorsing on such writ in substance as follows, to wit:

Form.

At the risk and request of the plaintiff, I authorize G. H. to serve and return this writ.

(*Signed*) E. F. *Justice of the Peace.*

Return, to be on oath.

And the person so authorized shall have the power of the person to whom the writ is directed, in the service and return of such writ, and shall be sworn to the truth of the return by him made.

Constable, failing to serve or return process, or making false return.

Penalty.

Sec. 11. *Be it further enacted*, That if any constable shall fail to serve any writ or precept to him directed, and make due return of the same, unless for good cause shown, or shall make a false return, every such constable so offending shall forfeit and pay the sum of ten dollars to the party injured, and all damages the party may sustain in consequence thereof, to be recovered before any justice of the peace in the township where such constable shall reside, by action of debt, founded on this statute.

Sec. 12. *Be it further enacted*, That if the defendant

Deft failing to appear.

Judgment by default on liquidated demand.

In other cases, plff. to prove his demand.

Plaintiff not appearing, judgment of non suit, except in certain cases.

Judgts by default or non-suit may be set aside.

And execution (if any) recalled.

Day to be set for trial and notice given.

fails to appear on the return day of the summons, and it shall appear by the return thereof, signed by the constable, that the same has been legally served on the defendant; in the manner herein before directed; and the plaintiffs demand is founded on a note or other instrument in writing, signed by the defendant, or is for a debt liquidated and certain, it shall and may be lawful for the justice to give judgment by default for the amount that may appear to be due, together with costs, and to issue execution for the same. And in all other cases, where defendant shall make default, the justice shall go into the examination of witnesses to substantiate plaintiff's demand: and the plaintiff shall recover no more than he can actually prove himself entitled to; and if he proves nothing, he shall recover nothing. And if the plaintiff shall make default in appearing, either in person or by agent, to substantiate his demand, non suit shall be entered up against him, except in the cases where the suit is founded on a note or instrument in writing signed by the defendant, or is for a debt certain, and admitted by the default of the defendant: *Provided*, That every justice of the peace shall have discretionary power, upon good cause shown to open judgment of non suit, and judgment by default, at any time within ten days after the rendition thereof, upon the application of the party injured, or his agent, upon such conditions and regulations as the said justice shall think reasonable, and if an execution has issued the justice shall recall the same; and upon the opening of any such judgment a day shall be set for the hearing of the said cause, and the opposite party, or his agent, notified thereof, at least three days before the day of trial; which notice shall be in writing, signed by the said justice, and served and returned by the constable, who shall be allowed therefor the same fees as on a summons. And thereupon the same proceedings shall be had as though no judgment had been rendered in the cause.

Justice may adjourn a cause not exceeding one month.

On affidavit, cause may be postponed, to procure testimony.

SEC. 13. *Be it further enacted*, That every justice of the peace shall have power to adjourn the trial of any action brought before him, to such further time as he may think proper, not exceeding one month; and upon affidavit of either party, or their agents, that the testimony of a material witness who resides out of the county, or at a greater distance than twenty miles from the place of trial, or from infirmity of body, or other causes specified in such affidavit, cannot be obtained personally, the cause shall be postponed to a day certain within such reasonable time as the distance of the witness, or the season of the year may make it necessary, to obtain the depositions of such witness: and whenever a cause is postponed at the instance of the defendant, and the original process has been a warrant, such defendant shall enter into a recognizance for a sum sufficient to cover the demand and costs, with sufficient surety, conditioned for his appearance on the day appointed for the trial of the cause, and in default of such appearance to pay the debt and costs, if judgment shall be given against such defendant. And the said justice shall grant a rule to take the deposition of such witness or witnesses, which rule being certified by the justice granting the same shall be sufficient authority to any justice of the peace within the United States, or their territories to take the depositions of such witness or witnesses, as may be named in said rule; and the testimony so taken shall be lawful evidence on the trial before such justice, or jury, as the case may be: *Provided*, That no rule shall be necessary to take the deposition of any witness in this state, but notice shall be given as in cases depending before the circuit court.*

Deft. to enter into recognizance in certain cases

Rule to take depositions to be granted by J. P.

No rule required to take depositions within this state.

*See title Depositions.

SEC. 14. *Be it further enacted*, That if any person, after being duly subpœnaed as a witness in any cause cognizable before a justice of the peace, shall neglect or refuse to attend at the time and place in the subpœna mentioned, he or she so neglecting or refusing may be fined in any sum not exceeding three dollars, to the use of the party on whose behalf such witness was subpœnaed; for which fine, with costs, the said justice shall issue execution, unless such witness shall, within thirty days after such fine is imposed, render a reasonable excuse to such justice for said default: *Provided*, That no witness shall be fined for non-attendance, unless the subpœna shall have been served at least two days before the trial, where the witness resides within ten miles, and one day for every ten miles thereafter; and the justice of the peace may issue attachments for any witness who fails to attend after being duly subpœnaed, and the witness against whom such attachment shall issue shall pay the costs thereof, unless he gives a satisfactory excuse to the justice for his non-attendance.*

Witness failing to attend, fined.

Proviso.

J. P. may issue attachments for witnesses.

*Subpœnas to be issued by J. P.; see title Justice of the Peace, sec 7; and "Witnesses."

SEC. 15. *Be it further enacted*, That if the parties appear before the justice either in person or by agent, the justice shall proceed to hear the proofs and allegations, and if the sum demanded shall not exceed ten dollars, shall give judgment, according to right and justice; but either party may have a trial by jury, if demanded before the justice has proceeded to inquire into the merits of the cause; which jury shall be composed of six persons, qualified to serve as jurors in the circuit court, if the debt, demand, or matter in controversy, do not exceed the sum or value of

Parties appearing, proceedings.

Either party may have a jury to consist of six, if demand do not exceed 20 dollars.

Or of 12, if it exceed $20.

Precept for a jury to be issued.

Jurors failing to attend, others to be summoned.

Jury to be sworn.

Verdict and judgment.

Fine of juror for non-attendance.

twenty dollars; or if the debt, demand or matter in controversy, exceed the sum or value of twenty dollars, and either party require it, the jury shall consist of twelve competent persons as aforesaid; and it shall be the duty of the justice (when a trial by a jury shall be demanded as aforesaid) to issue a precept directed to the constable of the township, commanding him to summon six (or twelve, as the case may require) good and lawful men of his township, in nowise akin to either party, nor interested in the suit, to be and appear before the said justice, at a time and place to be expressed in the precept, to make a jury for the trial of the action between the parties mentioned therein; and the constable shall return, with the said precept, a list of the names of the jurors whom he shall have summoned by virtue thereof; and if it shall appear that one or more of the jurors are disqualified to serve, or do not appear at the time and place required, then it shall be the duty of the constable immediately to summon others to serve in their stead; and upon the pannel being completed, the said jury shall make oath or affirmation well and truly to try the matter in dispute between the parties, and a true verdict give according to evidence; and upon the return of a verdict, the justice shall give judgment thereon with costs: and if any person summoned as a juror, as aforesaid, shall neglect or refuse to attend as commanded in the said summons, he shall be fined in any sum not exceeding five dollars, to the use of the county; for which fine, with costs, the said justice shall issue execution, unless the said person shall, within thirty days after such fine is imposed, render a reasonable excuse to such justice for the said default.

Set off may be pleaded.

Justice or jury to adjust demands.

Judgment for balance.

Assigned notes, &c. not allowed in set off, unless notice was given.

SEC. 16. *Be it further enacted*, That if the plaintiff in any action on contract pending before a justice of the peace, shall be indebted to the defendant by bond, bill, note, book account, or other contract, the defendant may plead the same in offset to the plaintiff's demand; and the justice, or a jury, if the case be tried by a jury, shall audit and adjust all accounts and demands between the parties, brought before them, if within the jurisdiction of a justice as aforesaid, and draw the just balance between the parties, and judgment shall be entered up for such balance accordingly; and the judgment so had and obtained shall be a complete bar to all demands thus audited, adjusted and decided on, between the parties, if within the jurisdiction of the justice of the peace, as aforesaid: *Provided*, That no sum on any bond, bill, note, or other demand, sold, endorsed, or assigned, to the plaintiff or defendant, shall be allowed in offset, unless it shall appear on trial that notice of such sale or assignment was given by the party holding such bond, bill, note, or demand, to the opposite party, before the commencement of the suit, which in such case shall be taken to be the day of service of the original writ in the action: *Provided*, That nothing herein contained shall cut off any demand the defendant may have against the plaintiff, if judgment is rendered by default: *Provided also*, That nothing herein contained shall cut off either party of his right of defence against such bond, bill, note, or other demand, on account of such assignment, but such party shall be allowed to make his defence in such manner as he might have done, had the suit been commenced by the original owner, or had the original owner of such demand plead the same in offset.

Proviso.

Proviso.

Set off of mutual judgments.

SEC. 17. *Be it further enacted*, That when there are mutual judgments recovered between the parties before a justice of the peace, such justice may, on the application of either party, if such application is made in court before such justice, offset such judgments against each other, and the execution shall issue for such balance as remains due after such offset; and if the party against whom judgment is rendered, may have a prior judgment (against the adverse party) rendered before any other justice of the peace, remaining unsatisfied, he may, by producing a transcript of such prior judgment, offset such prior judgment against the adverse party, as above mentioned; and the justice giving the transcript of such prior judgment, shall note the same on his docket, and stay all further proceedings on such judgment unless such transcript be returned without being admitted in offset.

Judgments before different justices.

Writings to be received in evidence, unless denied on oath.

SEC. 18. *Be it further enacted*, That when any suit shall be founded on any instrument in writing, purporting to be executed by the other party, or when any such writing shall be offered in evidence by way of offset, the same shall be received in evidence, unless the party charged to have executed it shall deny the execution thereof on oath.

Either party may require the other to testify in certain cases

SEC. 19. *Be it further enacted*, That when there is no evidence, or an insufficiency of evidence, to establish any demand or set-off, the party offering such demand or set-off may call on the adverse party to give evidence touching such demand or set-off; and if the party so called on shall refuse to give evidence, then the party offering such demand or set-off may give evidence touching the same.

Amicable actions and confession of judgment.

SEC. 20. *Be it further enacted*, That justices of the peace shall have power to enter on their docket, by consent of parties, amicable actions without any process, and to take the confession of judgment of any defendant appearing before him in his own proper person, in cases cognizable before a justice of the peace by this act, in which the same proceedings shall be had, and the same stay of execution be granted, as is provided for by this act when the action is commenced by summons or a warrant.

In trespass, if title to land is drawn in question, proceedings to be certified to circuit court.

SEC. 21. *Be it further enacted*, That whenever in any action of trespass on lands or other real estate, any defendant shall justify on a plea of title, the justice shall enter on his docket that defendant pleads title, and shall thereupon stop any further proceedings in his court, and shall certify the proceedings in the said cause into the circuit court, together with the process and papers, the same as in an appeal; and the same proceedings shall be had in the circuit court as on appeals, and the costs in the court below shall abide the decision in the circuit court; and the entry on the justice's docket of the plea of title, shall be conclusive evidence that the defendant relies on his title only by way of justification; "and if the recognizance on appeal shall be set aside by the circuit court, for any informality or insufficiency of the same, the appellant may forfeit the same, or execute another recognizance, by leave of the court, in such time that the other party shall not be unreasonably delayed thereby:"* *Provided, nevertheless*, That it shall be competent for the defendant, notwithstanding such plea, to shew, on the trial of the said cause in the circuit court, that the plaintiff had not possession of, or title to the premises, at the time such supposed trespass was committed.

If recognizance on appeal be adjudged insufficient, another may be entered into.

Appeal allowed to circuit court.

SEC. 22. *Be it further enacted*, That in all cases within the jurisdiction of a justice of the peace, except where the sum shall not exceed one dollar, any person who shall think himself or herself aggrieved by the judgment of the said justice, may, by himself or agent, have liberty to appeal therefrom, within twenty days after rendering such judgment, to the next circuit court to be holden within and for said county: and the party appealing, or some person in his stead, shall enter into recognizance, with one or more sufficient securities, in a sum sufficient to secure the debt or damages which may have been adjudged against the appellant, and all costs which shall have accrued or may accrue in such action; which recognizance shall be, as near as may be, in the following form, to wit:

Appellant to enter into recognizance.

Form.

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*The clause within inverted commas appears in this place in the original roll; it would seem, however, more properly to belong to section 22, and probably was an amendment designed to be inserted before the proviso of that section, but inserted before the proviso of section 21, in the enrolment, by mistake.

"We the undersigned, A. B. and G. H. acknowledge ourselves to be indebted to C. D. in the sum of ——— dollars, to be levied of our respective goods and chattels, lands and tenements, upon condition, nevertheless, that, whereas the said A. B. hath appealed from the judgment of E. F. a justice of the peace, in a certain action wherein the said A. B. is ——— and the said C. D. is ———: now, if the said A. B. the appellant, shall prosecute his said appeal with effect, pay and satisfy the condemnation money and all costs, or otherwise abide the judgment of the circuit court in said appeal, then this recognizance to be void, otherwise to remain in full force and virtue."

J. P. to file with clk. the original papers, process, recognizance, and copy of entries.

Which recognizance shall be subscribed by the parties entering into the same, and tested by the justice. And it shall be the duty of the justice to file, on or before the first day of the next term of the court, with the clerk of said court, the original papers and process, together with the aforesaid recognizance, and other papers appertaining to the cause, and a copy of the entries made in his docket. The clerk shall enter the appeal in his docket; and the suit shall be tried and determined in its order, like other cases where the parties are considered in court, the first term, unless sufficient cause be shown to the court to grant a continuance, and the costs accrued before the justice shall attend the event of the suit: *Provided*, That no appeal shall be allowed in any case where the judgment shall have been rendered by default or of non-suit, unless the justice of the peace shall first have refused to grant to the party aggrieved a new trial, if the same be applied for within twenty days from the rendition of judgment.

Clerk to enter appeal; proceedings.

No appeal on judgments by default or non suit, except in certain cases.

Notice of appeal when to be given.

Sec. 23. *Be it further enacted*, That in all cases of appeals, not prayed for on the day the trial is had, the party appealing shall notify, in writing, the opposite party or his agent, at least ten days before the sitting of the next court authorized to try the same; or if neither the opposite party nor his agent reside in the county, then such notice may be served by leaving a copy with the justice who tried the cause.

Appeal to operate as a supersedeas.

Sec. 24. *Be it further enacted*, That whenever any appeal shall be taken, and security given according to law, the same shall operate as a *supersedeas* to any further proceedings before the said justice; and if any execution shall have been issued by the said justice upon the said judgment, he shall recal the same.

If judgment affirmed, or verdict agt. appellant, judgt. to be

Sec. 25. *Be it further enacted*, That in all cases of appeals from justices of the peace, if the judgment of the justice of the peace be affirmed, or if on a trial upon the merits *de novo* in the circuit court, the verdict shall be agt. appellant and his security.

Return of execution to specify by whom satisfied.

Remedy of security.

against the appellant, judgment shall be given and execution issued, not only against the original party against whom the judgment is given, but also against his or their securities in the appeal bond; and the amount of such judgment, with costs, shall be levied of the estate, real or personal, of such security, in case the original party does not or cannot satisfy the said payment; and the sheriff or proper officer shall specify, on his return of the writ, how and by whom such execution has been satisfied: *Provided*, That the amount satisfied and paid by such security, shall be taken and considered a debt of record, in his or their favor, against any such principal debtor; and such security may, as in other cases of debts of record, thereupon sue out execution against such principal debtor.

Stay of execution.

If under $10.

If above $10 & under $30.

If above $30.

SEC. 26. *Be it further enacted*, That whenever any judgment shall be rendered against any defendant, and he shall give special bail in the manner hereinafter directed, if the judgment shall be under ten dollars, there shall be a stay of execution for one month; if above ten dollars and not exceeding thirty dollars, there shall be a stay of execution two months; and when the judgment shall be above thirty dollars and not exceeding ninety dollars, there shall be a stay of execution for four months.

How bail for stay of execution to be taken.

Execution to issue against principal and bail.

Return to specify by whom satisfied.

SEC. 27. *Be it further enacted*, That when any person shall become special bail for any defendant or defendants, or for any person or persons against whom judgment has been rendered, so as to entitle such person or persons to a stay of execution, such bail shall, before the justice of the peace, acknowledge himself bound with such principal, in the full amount of such judgment and costs; and the justice of the peace shall make an entry of such acknowledgment on his docket; and at the time limited for the stay of execution, the justice shall issue execution against both principal and bail; and if the principal shall not satisfy such execution, and the constable cannot find property enough to satisfy the same, of the goods and chattels of the principal, then he shall proceed to levy on a sufficiency of the goods and chattels of the bail to satisfy the amount of the execution with costs. And the said constable shall state particularly in his return upon the execution the sum collected of the bail, which statement shall be sufficient evidence for the bail, in an action against the principal, to recover the same with interest and costs, on motion before a justice of the peace.

Payment of judgts. to be made to the constable.

SEC. 28. *Be it further enacted*, That it shall be the duty of the constable to receive any money that may be paid to him on any judgment obtained before a justice of the peace in his township, and give the party so paying a receipt therefor, expressing on what account such money was paid, and such receipt being presented to the justice before whom the judgment was obtained, shall entitle the party to a credit on said judgment for the amount of said receipt; and the party entitled to the money shall have the same remedy against the constable and his securities, as if it had been paid on execution; and no payment to any justice of the peace, either before or after execution may have been issued, shall be accredited on, or be good against any judgment, unless paid with the consent of the party to whom it may be due.

Remedy of plaintiff.

Payment to J.P. not good

In default of payment execution to issue.

Sec. 29. *Be it further enacted*, That if the amount of the judgment shall not be paid as aforesaid, the justice shall grant execution therefor, together with costs, at any time, on demand, after the same shall by law be due, and issuable; which execution shall, as near as circumstances will admit, be in the form following, to wit:

Form.

THE STATE OF MISSOURI,

To the constable of——— township, in the county of———, Greeting:

Whereas, A. B. has obtained judgment before the undersigned a justice of the peace in the township aforesaid, against C. D. for the sum of——— dollars for debt (or damages, as the case may be,) and also——— for his costs. These are therefore to command you, to levy the said debt (or damages) and costs of the goods and chattels of the said C. D. and to expose the same to sale agreeably to law; and for want of sufficient distress, you are commanded to take the body of the said C. D. in custody, and convey him to the common gaol of the county, the sheriff or keeper whereof is hereby required to receive him, and him safely keep until the said debt (or damages) and costs be fully paid, or the said C. D. be otherwise discharged by due course of law: You are also commanded to make return of this execution to the undersigned justice within thirty days from this date. Given under my hand this——— day of——— 18 .

E. F. *Justice of the Peace.*

Sale under execution, when and how made.

Notice to be given.

And it shall be the duty of the constable to expose to sale, by public vendue, any effects seized by him by virtue of an execution, (to him directed) within thirty days after the date of the execution, giving due notice of the same, at least ten days previous to the day of sale, by at least three advertisements, put up at the most public places in the township, and return the overplus, if any, to the defendant in the execution.

Transcript of judgt. filed

Sec. 0. *Be it further enacted*, That any person, obtaining a judgment before a justice of the peace, above in clerk's office, a lien.

the sum of ten dollars, may file a transcript of such judgment in the office of the clerk of the circuit court of the county where the judgment was rendered, which shall, from the time of filing such transcript, have the same lien on the real estate of the defendant, as judgment rendered in the circuit court: *Provided*, No execution shall issue out of the clerk's office until an execution shall have been previously issued by said justice, and the constable, or other person to whom the same may be directed, as aforesaid, shall have returned, that no goods and chattels of the defendant are to be found in his township.

Execution not to be issued by clk. until one issued by J. P. and returned

In what cases execution may be issued to a different township

SEC. 31. *Be it further enacted*, That in all cases where a justice shall give judgment under this act, and it shall be suggested by the plaintiff, or his agent, that the defendant against whom such judgment is rendered, resides out of the township of the said justice, and that no goods or chattels, can be found in the township where the justice resides, to satisfy the judgment, in such case, it shall be the duty of the justice to issue an execution, directed to the constable of the township where the defendant resides, or his goods and chattels can be found, within the same county; and it shall be the duty of the constable to whom the execution is directed, to execute the same, and make return thereof to the justice who issued the execution, in the same manner provided for by this act respecting executions directed to the constable of the township where the justice resides.

The amount of debt, damages & costs, with fees of officers shall be endorsed on execution

In case of false return, &c proceedings against constable.

*Constable may be removed from office for withholding money; see Constables, sec. 6.

SEC. 32. *Be it further enacted*, That on the delivery of an execution to a constable, an account shall be stated on the docket of the justice, and also on the back of the execution, of the debt or damages, interest and costs, and fees due to each witness, juror and officer, separately, from which the constable shall not be discharged, but by producing to the justice, on or before the return day of the execution, the amount of the execution in money, or the receipt of the person to whom the money is due, or such other return as may be sufficient in law. And in case of a false return, or in case he neglect or refuses to make return, or does not produce the amount of the execution or receipt as aforesaid, or make such other return as may be sufficient in law,* the justice shall, on application of the party injured, or his agent, issue a summons, commanding the said constable to appear before him, on such day as shall be named in the summons, not exceeding six days from the date thereof, and then and there to show cause why an execution should not issue against him, for the amount of said execution. And if the constable shall neglect or refuse to appear as aforesaid, or does not show sufficient cause why execution should not issue against him, then the said justice shall enter judgment against such constable for the amount of the first execution, with costs, from which judgment there shall be no appeal nor stay of execution; and execution shall issue forthwith for the same: *Provided, always*, That the party injured may have his election, to proceed against the constable in the manner therein directed, or institute a suit in the circuit court against the constable and his securities.

Remedy at the election of the party.

Sec. 33. *Be it further enacted*, That whenever a constable shall levy an execution on property supposed to belong to the defendant in such execution, and any other person shall set up a claim to the property so seized, the said constable shall be authorized to summon six good and lawful men, being householders of his township, to meet at such time and place as the said constable shall direct, not to be more than ten days from the time such claim is set up as aforesaid, to try the right of property between the defendant in said execution and the person setting up the claim to the property levied on; and the said persons when assembled, shall have an oath administered to them by the said constable, well and truly to try the right of property and report their decision to the constable; and if the said persons shall find the property levied on to belong to the defendant in the execution, their report shall be an indemnity to the said constable in proceeding to sell the same, and the said jury shall be judges of the law and fact. The constable and the said jury shall be entitled to the same fees as are now or may be allowed by law for similar services, to be paid by the plaintiff in said execution, if the right of property is found to be in the person setting up such claim, otherwise to be paid by the person setting up the claim; if any of the persons summoned as aforesaid shall fail to attend, the constable shall forthwith summon others in their stead; and the persons so failing to attend shall be fined by the constable in the same sum as jurors failing to attend before justices of the peace are now liable; and unless the person so fined shall render a reasonable and satisfactory excuse for his non-attendance, to the constable, within thirty days thereafter, the constable shall proceed to levy the said fine with costs, of the goods and chattels of the said defaulting juror, and shall collect the same as on execution, and shall pay over said fine to the county treasury for the use of the county.

Property levied on claimed by a third person, constable to empannel a jury.

Oath & duty of jury.

Effect of verdict.

Fees of constable and jury.

Jurors failing to attend, others to be summoned.

Fine for non-attendance.

Sec. 34. *Be it further enacted*, That if any person shall hereafter commence a suit in the circuit court, which is

Suits within justices' jurisdiction,

brought in circuit court. properly cognizable before a justice of the peace, although he may recover judgment in such suit, he shall not recover costs, but shall pay costs.* This act shall take effect and be in force from and after the fourth day of July next.

[*Approved, February* 21, 1825.]

*See 'Costs,' sec. 11.

END OF VOLUME FIRST.